UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/C.5/50/2
27 September 1995

ORIGINAL: ENGLISH

Fiftieth session
FIFTH COMMITTEE
Agenda items 159 and 116

HUMAN RESOURCES MANAGEMENT

PROPOSED PROGRAMME BUDGET FOR THE BIENNIUM 1996-1997

Reform of the internal system of justice in the United Nations Secretariat

Report of the Secretary-General

I. INTRODUCTION

1. The present report describes the implementation measures required to reform the Organization's internal justice system, as requested by the General Assembly in its resolution 49/222 A of 23 December 1994. These proposals stem from the report submitted to the Assembly on 8 November 1994 (A/C.5/49/13) enumerating a number of basic concepts for the improvement of the internal justice institutions.

2. Major elements of the proposed reform were submitted to the General Assembly at its forty-ninth session in a report dated 18 March 1995 (A/C.5/49/60). The financial implications of the reform were submitted on 9 June 1995 (A/C.5/49/60/Add.1). Subsequently, the Secretary-General decided to amend his original proposal to take into account the suggestions made by the United Nations Administrative Tribunal on the legal aspects of the reform (see A/C.5/49/60/Add.2 and Corr.1), and to incorporate new provisions agreed upon after further consultation with the staff. The Secretary-General now submits the present consolidated report in view of the decision taken by the General Assembly to defer consideration of the item until its fiftieth session (decision 49/491 of 20 July 1995).

3. The Secretary-General gratefully acknowledges the support expressed by the General Assembly in resolution 49/222 A of 23 December 1994 for his efforts towards the development of a management environment and culture in the

95-29043 (E) 191095 201095

/...

Organization that is supportive of having staff members contribute to their maximum potential, effectiveness and efficiency. Major changes must be introduced if the Organization is to meet the new challenges it faces, leading to more cooperation with the staff, more collegiality, enhanced trust, improved communications, greater teamwork, and better management at all levels. The proposed reform is an integral part of the vast effort now under way to rationalize the management of the Organization, and to make it more responsive to the needs of Member States, programme managers and staff members.

4. The proposed reform consists of a number of complementary measures designed to work together to promote a fair and efficient internal justice system in the Secretariat. The present system was designed at a time when there were only a few thousand staff members and only a few cases per year. It relies on joint participation of volunteer staff members who advise the Secretary-General on appeals and disciplinary cases. A careful evaluation of the present system has led the Secretary-General to conclude that techniques that worked satisfactorily in the past, with fewer staff, fewer duty stations and field missions, fewer cases and less emphasis on accountability on the part of programme managers and their staff, are no longer adapted to the present circumstances. The need for reform has been recognized by the General Assembly, the Secretariat and the staff. An essential component of the proposed reform is a series of measures designed to promote the early resolution of disputes before they reach the formal appeal stage. If that stage is reached, however, the reform provides for a new, professionalized, mechanism to replace the present system, which is perceived as slow, costly and inefficient.

5. Substantial reform is also required in the disciplinary area. Delay in disciplinary cases creates unnecessary anxiety for staff members suspected of misconduct and deprives the Organization of the capacity to ensure swift action in the context of the greater accountability expected of its staff. Further delays occurred in recent years owing to the fact that a number of cases in specialized areas, such as procurement, taxes or financial matters, called for technical knowledge that was not generally available among the members of the standing Joint Disciplinary Committees. The system must ensure prompt and fair consideration of all cases and provide competent, impartial and timely advice in disciplinary cases.

6. The purpose of the proposed reform is threefold:

(a) To enhance earlier reconciliation and resolution of disputes before they develop into formal litigation;

(b) To professionalize the membership of appeals and disciplinary boards, and to provide them the means to dispose of cases in a more expeditious yet fair fashion;

(c) To provide a cost-effective and simple justice system, with the elimination of hidden costs and cross-subsidization.

7. The present report explains the mechanisms by which the proposed reform will be achieved and addresses its financial implications.

II. EARLY RECONCILIATION AND RESOLUTION OF DISPUTES

8. The Secretary-General is committed to a collegial and positive atmosphere in staff/management relations conducive to quality work at a level of productivity in line with staff qualifications and with the Organization's changing mandates. Continued lack of speedy resolution of staff grievances would constitute a major obstacle to that commitment. To avoid this, the Organization will provide training in early resolution of conflicts, emphasize mediation of differences and increase its capacity to conduct effective review of administrative decisions at an early stage of the appeals process.

A. Training

9. In line with the introduction of a new management culture in the Secretariat, the Administration has already placed greater emphasis on the early resolution of conflicts through dialogue, positive communications, exchange of information and reconciliation of differences. New training programmes, provided for in the 1994-1995 biennium, have been designed to improve communications skills and dispute-resolution techniques. Executive and Personnel Officers, as well as administrators, are currently going through an intensive "client service" training that will allow them to identify the real concerns of staff members and determine whether, and if so, how, those concerns may be met within the constraints of the applicable rules. Managers are beginning to go through specialized management skills training with a view to making them more responsive to the performance and needs of their staff and less likely to take decisions that are not understood or not justified.

B. Ombudsman mediation panels

10. Ombudsman panels at all major duty stations will be appointed jointly by existing staff/management machinery to deal with disagreements, grievances and discrimination issues raised informally by staff members. The new system will replace the current panels on discrimination and other grievances created pursuant to the General Assembly's request in its resolution 31/26 of 29 November 1976 to appoint a panel to investigate allegations of discriminatory treatment. The purpose of the reform is to introduce a more effective system and to encourage mediation, using the positive experience of other agencies within the system.

11. Ombudsman panels will be established under the guidance and direction of a Coordinator, who will ensure the proper functioning of the new system. In line with the Secretariat's new management culture, the panels will enjoy a higher profile than present discrimination panels, emphasizing mediation between the parties in order to resolve disputes or grievances before they develop into formal litigation. Members of ombudsman panels will be trained as part of the training programmes mentioned in paragraph 9 above.

12. Should the General Assembly approve this reform, the Coordinator would be appointed in early 1996 and organize, train and guide ombudsman panels in New York, Geneva, Vienna, Nairobi and Jerusalem, and at the regional commissions.

Members of ombudsman panels will normally provide their services in addition to their regular duties. On urgent matters, however, the Coordinator may request the supervisors of the members of a particular ombudsman panel to release them from their regular duties in order to expedite resolution. Detailed terms of reference will be established in an administrative instruction. The establishment of a post at the D-1 level would be required for the Coordinator. In addition, an amount of $41,300 would be required in 1996-1997 for the travel of the Coordinator to help establish ombudsman panels at the various duty stations.

C. Substantive review of administrative decisions

13. The present system requires staff members wishing to appeal an administrative decision to request, as a first step, a review of that decision. Administrative reviews are normally prepared by the Administrative Review Unit in the Office of Human Resources Management. Over recent years, the Administrative Review Unit was not staffed adequately to prepare a substantive review in writing in every case before an appeal was filed, owing not only to the greater number of requests for review but also to the substantial increase in the number of appeals and to the fact that disciplinary cases, also handled by that Unit, must be given priority. It is likely that a number of cases reached the litigation stage when a substantive review could have resulted in an informal resolution or a formal settlement. On the staff side, concern was expressed that the Administrative Review Unit would first review decisions and then defend their validity on appeal.

14. It is proposed that review of administrative decisions be conducted within the Office of the Under-Secretary-General for Administration and Management, independently of the official in that Office who provides advice on decisions to be taken on recommendations received from advisory bodies in appeals and disciplinary cases. This will require the establishment of two posts of Administrative Review Officers, one at the P-5 level and one at the P-4 level. The Administrative Review Officers will examine the merits of all requests and seek relevant information from the office or department that took the contested decision. Each request will be reviewed to determine whether a decision should be reversed or amended in a mutually acceptable manner, consistent with the relevant regulations and rules, as well as with the obligation to treat staff equally. When appropriate, the Administrative Review Officers will recommend corrective measures to the Under-Secretary-General who, depending on the particular decision and the rules on delegation of authority, may act directly or in collaboration with the head of the office or department concerned.

15. In order to allow resolution at this stage of the maximum number of cases, an amendment to the Staff Rules is proposed to allow for the extension of the present time-limits for administrative review. Staff members will now have three months, rather than two, to request administrative review. This will allow for the submission of requests that more fully substantiate the reasons why, in the view of the staff member concerned, the original decision should be changed. The Administrative Review Officers will also have more time to conduct a review than under the present rules, which only allow one month to reply to staff members serving in New York and two months to reply to all other staff

members. Experience has shown that the present time-limits are often not long enough to obtain the relevant information from the field, or to convince a programme manager to change his or her decision. An additional month would allow more cases to be resolved at this stage. Accordingly, it is proposed to amend staff rule 111.2 (a) to provide a three-month time-limit for staff members to request administrative review, and to amend staff rule 111.2 (a) (ii) to provide a two-month review period for cases arising in New York and a three-month review period for all other cases (see annex I).

16. It is anticipated that all these measures will not only facilitate the resolution of disputes before they become formal appeals, but will also reduce delays later on. A combination of greater openness, improved communication and exchange of information at an early stage, together with consideration of cases by ombudsman panels and Administrative Review Officers, should ensure that most, if not all, the relevant information has been assembled before an appeal is filed, thus avoiding the need which sometimes arises to delay consideration of cases because necessary information is not provided in a timely manner.

III. PROFESSIONALIZATION OF THE JUSTICE SYSTEM

17. The Secretary-General believes that the justice system will be substantially improved by professionalizing the bodies considering appeals against administrative decisions and disciplinary cases and by appointing a Legal Officer to the Panel of Counsel, on which staff members frequently rely to represent them.

A. Replacement of the Joint Appeals Board by an Arbitration Board

18. The Secretary-General and the staff agree that the present system, where a Joint Appeals Board (JAB) advises the Secretary-General, is no longer viable. At the June 1995 session of the Staff Management Coordination Committee, the staff issued a formal statement expressing full support for the reform, in which the appeals process would be fully professionalized. They stated that they did not share the views expressed by the Tribunal (see A/C.5/49/60/Add.2 and Corr.1) that the present JAB system should continue and that the full implementation of the reform should be postponed.

19. The main problem of the present system is that it relies entirely on volunteers. This was appropriate as long as the cases were few (18 in 1970) and enough volunteers could be released for the time necessary to consider cases. However, in continuation of a long trend, there were more than 100 cases per year in 1993 and 1994. Volunteers are no longer available in sufficient numbers and those who are may not be equipped with the technical knowledge required by the volume and complexity of the cases.

20. During the past few years, it has been increasingly difficult for the Administration to find sufficient numbers of suitable staff who could be appointed as JAB members or chairpersons by the Secretary-General. Many cannot afford the time required to consider a case more than very occasionally, if at

all. Moreover, at a time of increased accountability, programme managers are reluctant to release their staff for duties unrelated to programme delivery. On the staff side, the last three attempts to renew the group of staff-elected members failed. The first two yielded far fewer nominees than the number of slots to be filled; the last one drew no names at all.

21. Remaining JAB members have felt duty-bound to continue their functions, despite the burden placed on them as a result of their dwindling numbers. For instance, since the beginning of 1993, in New York, 11 out of 30 staff-elected members were unable to serve on more than one case per year. By contrast, 12 of their colleagues heard 3 to 17 cases per year. This has created resentment both on the part of JAB members who have to spend an increasing amount of time on JAB functions, and on the part of programme managers who are repeatedly deprived of their staff. Repeated service on the JAB has also exacerbated actual or perceived problems of conflicts of interest, where some JAB members are viewed, justifiably or not, as having a personal or professional agenda causing them to favour one side or the other, regardless of the merits. Staff suspect that some chairpersons and members appointed by the Secretary-General support the actions of the Administration to protect or further their own careers. The Administration suspects that some staff-elected members systematically take the side of the appellant in order to protect their standing with the staff or in order to establish a precedent that they could use in a subsequent case, either as appellants themselves or as counsel for other staff members.

22. Aside from the difficulty of finding staff members willing to volunteer their time to serve on the JAB, the present system suffers from the fact that many of those who serve do not, by definition, have the professional training that would allow them to consider cases efficiently. Most appeals involve personnel or legal matters. Staff serving in personnel and legal functions are excluded from JAB service in order to avoid a conflict of interest or the appearance of such a conflict. As a result, JAB members must spend a considerable amount of time getting acquainted with all the rules relevant to a particular case, understand their purpose and meaning, and apply them to situations that may be so complex that the issues are difficult to identify and address properly. In addition, JAB members with no legal training may spend an inordinate amount of time trying to decide what is acceptable evidence, and what is required in order for the evidence to be conclusive.

23. Not surprisingly, delays ensue. In New York, it takes an average of nine and a half months for a case to be processed: five and a half months from the filing of the appeal to the submission of the last pleading, and four months afterwards for a panel to be constituted and consider the case. In Geneva, it takes almost 27 months on average for a case to be processed: 6.2 months from the filing of the appeal to the submission of the last pleading, and 20.7 months for a panel to be constituted and consider the case. Additional resources provided to the JAB secretariat at Geneva have not alleviated the problem, which is not caused by the secretariat but by the JAB system itself.

24. Despite determined efforts to follow the policy announced in 1987 (A/C.5/42/28, para. 10) that the Secretary-General would accept unanimous JAB recommendations, except when they impinged on major questions of law or principle, 55 per cent of the recommendations had to be rejected, in whole or in

part, during the past four years. This was because the Secretary-General determined that those recommendations were based on a defective application of the law, disregarded established policies or were not supported by the evidence. In about 70 per cent of the cases over the past four years, the Administrative Tribunal either rejected in their entirety applications against decisions where the Secretary-General had rejected a JAB recommendation, or ordered a measure that was significantly less drastic than what the JAB had recommended, such as awarding a relatively small amount of damages when the JAB had recommended that a separated staff member be reinstated. The Tribunal agreed with the views of the JAB in only about 20 per cent of the cases, and ordered measures similar to what the JAB had recommended. In the remaining 10 per cent of the cases, the Tribunal disagreed with both the JAB and the Administration, and ordered measures significantly more forceful than those recommended by the JAB. Thus, in the vast majority of the cases, the Tribunal validated the Secretary-General's decision to reject a JAB recommendation.

25. The present system, which does not work in an acceptable manner, is extremely costly. A major component of the cost represents the time spent by JAB members and chairpersons on each case, away from their regular duties. It is, of course, impossible to provide an exact costing of that component, which varies depending on the individuals involved and on the complexity of each case. However, based on the average time required for a panel to consider a case, and the level of remuneration of the chairperson (usually at the D-1 or D-2 level), and of the members (Professional or General Service), a conservative estimate of the cost per case for the time spent away from regular duties is $8,000. Since there were 104 new "active" cases in 1994 - excluding new cases that were subsequently settled, withdrawn or abandoned - the total cost relating to the time spent by staff serving on JAB panels is estimated at $832,000 for that year, on the basis of the most conservative approach. Other estimates, which may be more realistic, would bring the cost of time spent on cases by JAB members to $1.5 million per year. It is noted that the cost of volunteer time is only one component of the total cost per case, which must also include salary and support costs required to handle cases at the level of administrative review (Office of Human Resources Management and substantive offices involved in the review, staff member and counsel), at the level of appeal to the JAB (Office of Human Resources Management to reply to the appeal, appellant and counsel, JAB secretariat) and at the level of the Administrative Tribunal (Office of Legal Affairs to reply to the application, applicant and counsel, Tribunal secretariat). In 1985, the Advisory Committee on Administrative and Budgetary Questions (ACABQ) informed the General Assembly that the average total cost per case was $24,000. 1/ There is no reason to believe that the cost has in any way decreased since that time.

26. Faced with this situation, the Secretary-General considered a number of options and concluded that a professionalized dispute-resolution mechanism by arbitrators recruited from outside the United Nations system would be the best answer to the needs of the Organization. Before reaching this conclusion, the Secretary-General carefully considered the possibility of a phased approach, where, for several years, the reform would consist only of measures aiming at early reconciliation and resolution of disputes (see paras. 8 to 16 above). This possibility, however, is predicated on the survival of the JAB system which, as shown above, no longer functions in an acceptable manner. Measures to

encourage early resolution of disputes may not produce immediate results. They are part of a changing work environment and culture and will require time, good will and active participation on the part of all concerned. The Organization cannot afford to wait years to ascertain whether a better initial response to the concerns of staff members, the introduction of ombudsman panels and a substantive review of all contested decisions might reduce the case-load to such an extent that the JAB could handle it. Even if those measures were to achieve optimal results, they would not remedy the basic structural problems of the JAB.

27. The proposed arbitration system will provide a permanent structure to deal with all appeals. It will no longer be necessary to plead with reluctant staff members that the Organization needs them to volunteer their services to sit on JAB panels. It will no longer be necessary to take staff members away from their regular duties.

28. The arbitrators will be independent. They will be "officials" of the United Nations, not staff members subject to the authority of the Secretary-General. Nor will they be subject to any form of control by staff in the exercise of their functions. As a result, the perennial problem of "conflict of interests" will disappear.

29. Cases will be considered by professionals skilled in ascertaining relevant facts and supporting evidence. Experienced practitioners would have no particular difficulty in coming to terms with the rules they would have to apply. The fundamental principles governing conditions of appointment and employment of staff are contained in the Charter of the United Nations and the Staff Regulations, and explained in the jurisprudence of the Administrative Tribunal. Afterwards, it is a matter of ensuring that those principles, and the rules that implement them, are being fairly applied to the facts of a particular case. This is a task that would present no particular difficulty for experienced arbitrators, while it may constitute a major challenge to volunteer staff.

30. The Secretary-General intends to accept the unanimous recommendations of the proposed arbitration board, unless there is a compelling reason of law or policy not to do so. He believes that a professional mechanism to deal with appeals will result in only a few cases where advice is rejected. Should a unanimous recommendation of the arbitration board be rejected, the grounds for the rejection would be identified in the letter informing the staff member of the decision on the appeal.

31. The new, professionalized system will also allow for the gradual introduction of binding arbitration, as contrasted to the present system, which is based solely on review and recommendations until a case eventually - and often years later - reaches the Tribunal. All cases, whether they involve a factual dispute over a minor incident or a fundamental question of principle, whether they involve a few hundred dollars or several millions, are at the moment treated in the same way. The Secretary-General would wish to use binding arbitration as a means to introduce a simplified procedure for cases where the normal, more costly process may not be necessary, such as disputes on purely factual issues, or cases where the amounts involved are relatively small. This would be the equivalent of a "small claims court", which is found in many legal

systems. Safeguards would be present to ensure that binding awards could not ignore the applicable law, or result in a miscarriage of justice. Should this occur, the Secretary-General, as well as the staff member, would have the right to appeal the award to the Administrative Tribunal.

32. The proposals for binding arbitration were elaborated in close consultation with the Legal Counsel, and in the light of the constitutional framework set out in the Charter. Great care was taken to preserve fully the authority of the Secretary-General as chief administrative officer of the Organization. Since staff members subject to the authority of the Secretary-General under staff regulation 1.2 cannot make decisions binding upon him, it is proposed that the arbitrators not be staff members. They will, however, as noted above, be "United Nations officials". Binding arbitration will be optional at first, and will not take place unless each party specifically consents to it. At this first stage, therefore, there will be no award binding on the Secretary-General unless he, in the exercise of his discretionary authority, agrees with the individual appellant that a specific case should be submitted for binding arbitration. Any request from a staff member asking for binding arbitration would, of course, be seriously considered and, if the request could not be granted, a reasoned explanation of the Secretary-General's decision would be given. The system will be fully tested over a two-year period. Extensive consultations with all interested parties, including the staff and the Administrative Tribunal, will take place in 1998 to assess the results of optional binding arbitration. At that time, and should the Secretary-General conclude that optional binding arbitration has produced satisfactory results, the General Assembly would be informed of the results of the assessment and asked to approve the introduction of binding arbitration for defined classes of appeals, which could include, for example, appeals where the disputed issues are purely factual or do not involve more than a stated amount.

33. As explained above, binding arbitration as a means of introducing a system akin to a small claims court precludes the arbitrators from being staff members subject to the Secretary-General's authority under staff regulation 1.2. This necessarily rules out the option of a "semi-professional JAB", which was carefully considered by the Secretary-General before rejecting it. Under that option, only the chairperson would be a professional arbitrator recruited from the outside and serve full time, while the other members would be appointed from qualified staff and would serve on a part-time basis.

34. Furthermore, the "semi-professional JAB" option would be almost impossible to implement. Most staff who, in theory, would have the requisite qualifications to sit on such a body now serve in personnel or legal functions. They have traditionally been excluded from service on the JAB in answer to the staff's concern that colleagues serving in those functions may not be able to distance themselves from their past experience and look objectively at an appeal that may call into question the validity of practices they themselves may have followed in their regular duties. Whether or not justified in fact, those concerns are real and must be taken into account. Even if appropriate professionals could be identified among the staff, another major difficulty would come from the fact that the number of cases does not justify year-round functions on the JAB for anyone but the chairperson and alternate chairperson. Therefore, the members would have to split their time between their JAB duties

and their regular duties. This would replicate a serious weakness of the present system, which ignores the requirements of programmes mandated by the Assembly, and the need to ensure accountability for their delivery. Understandably, programme managers would be extremely reluctant to release for substantial periods one or more of their staff members who, by definition, would have to be excellent in order to be selected to serve on a "semi-professional JAB", and could not be replaced by their office since JAB service would be part-time only. It is also likely that selected staff members would see this as a negative move, outside the normal career structure, and would resist it. A "semi-professional JAB", therefore, is not a viable option.

35. The Secretary-General thus recommends the introduction of an outside and fully professionalized dispute-resolution mechanism, together with the introduction of optional binding arbitration proceedings. He believes that the proposed reform completely answers the repeated requests of the General Assembly for a just, transparent, simple, impartial and efficient system of internal justice in the Secretariat. This will be achieved through the establishment of a United Nations Arbitration Board to replace the current in-house JAB system.

Structure and composition of the Arbitration Board

36. The JAB, panels of which are currently located in New York, Geneva, Vienna and Nairobi, will be replaced by an Arbitration Board, which will have its main secretariat in New York and a secretariat at Geneva. This will not represent any major change in practice since the Vienna JAB received only two new cases in 1994 and the Nairobi JAB, which considers exclusively appeals filed by staff of the United Nations Environment Programme and the United Nations Centre for Human Settlements (Habitat), had none.

37. Replacement of the JAB by an Arbitration Board will require the authorization of the General Assembly since the JAB mechanism, composed of staff whose powers are limited to making recommendations, was established by the Secretary-General pursuant to staff regulation 11.1. Furthermore, appeals from the JAB to the Administrative Tribunal are authorized by staff regulation 11.2 and so this regulation will also have to be changed.

38. Draft changes to the Staff Regulations, and consequential changes to the Staff Rules, to permit the establishment of the Arbitration Board are set out in annex I. The Arbitration Board itself will be established by statute, promulgated by the Secretary-General. A draft of that statute is contained in annex II, accompanied by a brief commentary explaining the more technical aspects of the statute. The main features of the Arbitration Board are described below. Consequential amendments to the statute of the Administrative Tribunal are found in annex III.

Major features of the Arbitration Board

39. Article 1 of the draft statute establishes the Arbitration Board and article 2 defines its competence and jurisdiction. The Arbitration Board will replace the JAB. In addition, when the Secretary-General and a staff member have agreed to submit a dispute to the Arbitration Board for binding

arbitration, the Board will have the authority to issue a binding award (which can only be appealed on very narrow grounds: see para. 52 below).

40. Article 2 also provides an enhanced mechanism to initiate efforts towards conciliation, which, under the present system, may occur only with the consent of both parties. The present limited mechanism has proved to be of little practical use. Under the new system, conciliation could be initiated at the request of either party. More importantly, the Chairperson of the Arbitration Board, or a panel of the Arbitration Board dealing with an appeal, could direct the parties to attempt to conciliate in good faith, under rules to be established by the Arbitration Board.

41. The membership of the Arbitration Board is dealt with in article 3 of the draft statute; it will be headed by a Chairperson located in New York and an Alternate Chairperson located in Geneva. The Secretary-General had originally proposed that only the Chairperson would serve on a full-time basis. However, after further consultation with the staff and the decision that both the Chairperson and Alternate Chairperson may have to travel to hear disciplinary cases when appropriate (see para. 62 below), it has become necessary for the Alternate Chairperson also to serve on a full-time basis. Both in New York and in Geneva there will be two members and two alternate members, who are to be available in the event of the illness or unavailability of a member. The members or alternate members will serve on a part-time basis, as needed. The Chairperson, Alternate Chairperson and members and alternate members will be appointed by the Secretary-General after consultation with staff through the joint machinery established pursuant to staff regulation 8.2.

42. The Secretary-General believes that the proposed membership of the Arbitration Board will be adequate for the number of cases filed in New York and Geneva. In 1993, a total of 110 cases were filed with the JAB, 20 of which were later withdrawn, settled or abandoned, leaving 90 cases. In 1994, a total of 124 cases were filed, 20 of which were later withdrawn, settled or abandoned, leaving 104 cases. Given that both the Chairperson and Alternate Chairperson will be serving full time and will be in a position to ensure that cases are ready for consideration by the Board when in session, it is estimated that 10 one-week sessions in New York and six one-week sessions at Geneva would allow for a timely processing of the cases, on the basis of the current workload of the New York and Geneva JABs. Adjustments, upwards or downwards, may have to be made at a later stage depending on the results of the first two years.

43. Article 4 sets out the structure of the Arbitration Board. The Board will be divided into two sections, to be located in New York and Geneva. There will be a total of 10 externally recruited arbitrators, no two of whom may be from the same Member State, a rule derived from the statute of the Administrative Tribunal.

44. To ensure the independence of the Board's members and to enable them to issue awards that bind the Secretary-General, they will not be staff members of the Organization, but each will have, solely when exercising his or her adjudicatory functions, the status of a United Nations official, which will confer upon him or her functional privileges and immunities. Such status, which is similar to that enjoyed by the Chairman of ACABQ, would require action by the

General Assembly in the resolution amending the Staff Regulations. If the General Assembly approves the present report, it is anticipated that selection of the members of the Arbitration Board will begin in late 1995 and that their appointment will take place in early 1996.

45. As envisaged in article 3 of the draft statute, the remuneration of the Arbitration Board Chairpersons and members will be established by the Secretary-General, revised from time to time and reported to the General Assembly. To this effect, the Secretary-General would intend to establish the annual compensation of the Chairperson and Alternate Chairperson at a level equivalent to the base salary and daily subsistence allowance payable to United Nations staff members at the Director (D-2) level, step VI, serving at Headquarters and Geneva, respectively. This would require an amount of $249,200 for the Chairperson and $267,500 for the Alternate Chairperson on a biennial basis. The members and alternate members of the Board would receive, for each day they exercise their functions during scheduled sessions at Headquarters and Geneva, one three-hundred-and-sixty-fifth of the annual compensation equivalent to the base salary and daily subsistence allowance payable to United Nations staff members at the Director (D-2) level, step 1, serving at Headquarters and Geneva, respectively. On the assumption that there would be 10 one-week sessions in New York and six one-week sessions in Geneva per year, an amount of $64,400 would be required to compensate members serving in New York and $41,600 for members serving in Geneva. The other conditions of service applicable to the members of the Arbitration Board would be as follows:

(a) Entitlement to the payment of subsistence and travel costs when travelling on official business. This would be in accordance with the standards of accommodation for all travel on official business applicable to staff members of the United Nations at the D-2 level;

(b) Payment of installation allowance to the full-time Chairperson and Alternate Chairperson if they were not residing at the duty station at the time of assuming their duties;

(c) Coverage for service-incurred death, injury or illness. Such coverage shall be under the rules governing compensation to members of commissions, committees or similar bodies in the event of death, injury or illness attributable to service with the United Nations.

Based on the number and duration of meetings referred to above, an amount of $284,600 would be required for the travel and subsistence of the members and alternate members of the Board.

46. The Chairperson of the Arbitration Board will be responsible for the proper administration of the system and will be in charge of the Board's secretariat, which will be headed by a Secretary to be appointed after consultation with the staff.

47. Article 5 of the draft statute deals with promulgation by the Board of rules of procedure and describes the manner in which the staff will be consulted on the elaboration of those rules.

48. Article 6 defines the conditions of receivability of an appeal to the Arbitration Board.

49. Article 7 of the draft statute sets out the powers of the Board. When the Board acts in a non-binding capacity, its powers are in essence the same as those of the JAB, which it replaces: it makes recommendations to the Secretary-General. When the Arbitration Board makes binding awards, its powers are no greater than those of the Tribunal. The most important limitation is that, having regard to the role of the Secretary-General as the chief administrative officer of the Organization, neither the Tribunal nor the Arbitration Board may compel the Secretary-General to rescind a decision or compel the specific performance of an obligation. Both the Tribunal and the Arbitration Board, when issuing binding decisions, must fix compensation in the event that the Secretary-General decides in the interest of the Organization that an appellant should be compensated without further action being taken. Although the Secretary-General has a choice between specific performance or payment of damages, he is bound by a decision of the Administrative Tribunal and is likewise bound by an award of the Arbitration Board.

50. The Arbitration Board may recommend or award, as the case may be, damages for actual loss but may not recommend or award punitive or exemplary damages. Where a staff member suffers actual loss through non-observance of his or her conditions of employment it is appropriate for the Organization to be responsible for that loss. It is, however, inappropriate for public funds to be used to finance punitive awards. In such cases where the Arbitration Board's report indicates that damages have been awarded because the Board found that there has been a deliberate misdeed of one staff member, the Secretary-General will, in accordance with the requirements of due process, investigate the matter and, if warranted, seek recovery from and/or bring disciplinary charges against that staff member.

51. Article 8 of the draft statute provides for publication of the binding awards of the Arbitration Board.

52. Article 9 deals with appeals and provides grounds of appeal in cases where the Arbitration Board is making recommendations. These grounds are the same as those currently existing for appeals made after a decision consequent to JAB advice. The fundamental change is introduced in cases where the Arbitration Board is making binding awards. In such cases, either party, that is, the Secretary-General as well as the staff member, will have limited grounds of appeal, which are set out in article 9.2: error of law, and fundamental error of procedure or fact that has occasioned a miscarriage of justice. The rationale of this limitation is to foster the speedy resolution of disputes and to reserve for the Tribunal consideration of cases that involve issues of law or matters of special importance.

53. Article 10 deals with amendment of the statute, which requires the approval of the General Assembly.

B. Replacement of the Joint Disciplinary Committee by a Disciplinary Board

54. Under the present chapter X of the Staff Rules, a Joint Disciplinary Committee (JDC) advises the Secretary-General in disciplinary matters, either before a disciplinary measure has been imposed, or afterwards, on appeal against a decision by the Secretary-General to impose summary dismissal in a case of serious misconduct.

55. The system has proved to be extremely slow and cumbersome, especially when ad hoc JDCs were constituted in regional commissions or in the field. In cases requiring specialized knowledge in technical areas, such as taxes or procurement, a recurrent problem has been to identify potential JDC members who would have the ability not only to understand the technical aspects of the activities of a staff member, but also to evaluate fairly whether the staff member has failed to live up to the standards that the Organization has the right to expect.

56. The Secretary-General proposes to replace the JDC by a Disciplinary Board composed of qualified professionals. He considered whether the new Board should be composed entirely of non-staff members, as is recommended for the Arbitration Board. The situation, however, is quite different. In order to preserve the Secretary-General's disciplinary authority over staff members, the Disciplinary Board will not take decisions, but will make recommendations, on the basis of which the Secretary-General will decide what disciplinary measure(s), if any, are appropriate in the particular circumstances of a case. Since the Disciplinary Board will make recommendations only, there is no constitutional bar against having staff members serve as members of the Board, as opposed to the situation created by the introduction of binding arbitration for appeals against administrative decisions (see para. 32 above). Moreover, a disciplinary case is, by its very nature, different from an appeal as it typically requires an assessment of whether the standards of conduct, applied objectively to a reasonable staff member, have been observed. It is appropriate for staff members to play a role in making such an assessment, rather than having it made entirely by outsiders. Finally, given the limited number of disciplinary cases to be referred to the Disciplinary Board (20 cases Secretariat-wide were referred to a Joint Disciplinary Committee in 1994), the conclusion was reached that it would be possible to identify two qualified and suitable staff members to serve on each case, without placing an unbearable burden on the programme managers who would have to release their staff for that purpose.

57. The Secretary-General proposes that the New York section of the Disciplinary Board be chaired by the Chairperson of the Arbitration Board and that the Geneva section be chaired by the Alternate Chairperson of the Arbitration Board. This will ensure that the proceedings will be presided over by experienced professionals used to ascertaining facts from conflicting versions of events, and used to determining what constitutes evidence necessary to support a determination. The other members of the Disciplinary Board will be staff members selected on the basis of their fairness and impartiality, as well as on the basis of their ability to understand the technical aspects of the cases brought before the Disciplinary Board. Once the Board would be seized of

a case, the Chairperson and the members would consider it on a full-time basis until its completion, thus ensuring a prompt, thorough and fair consideration.

58. Draft changes to the Staff Rules required for the proposed reform of the disciplinary process are set out in annex I. The draft statute of the Disciplinary Board is set out in annex IV. The major features of the Disciplinary Board are described below.

Major features of the Disciplinary Board

59. Article 1 of the draft statute establishes the Disciplinary Board and article 2 defines its competence and jurisdiction. The Disciplinary Board will replace the Joint Disciplinary Committee for Secretariat staff. 2/

60. Article 3 deals with the membership and composition of the Disciplinary Board. The Chairperson and Alternate Chairperson of the Arbitration Board will also serve, respectively, as Chairperson and Alternate Chairperson of the Disciplinary Board. A prerequisite for appointment of staff to serve as members or alternate members of the Board is that they meet the following minimum qualifications: (a) highest standards of integrity and at least five years experience in the Secretariat, (b) university-level degree in accounting, law, public administration or finance, or equivalent qualifications and professional experience relevant to the functions, and (c) established ability to draft in a working language of the Secretariat, and adequate knowledge of another working language. These conditions seek to ensure that all staff appointed to the Board have the necessary ability to understand and evaluate the matters before them and are able to draft a report with recommendations which, by their force and logic, would normally be accepted by the Secretary-General. In addition, and in order to ensure the absolute independence of the Disciplinary Board, members and alternate members cannot be members of the appointment and promotion bodies, or of staff representative bodies.

61. In New York and Geneva, two members and two alternate members will be appointed by the Secretary-General directly. Two members and two alternate members will also be appointed by the Secretary-General from a list of eight staff members presented by the staff representative bodies on the Staff Management Coordination Committee. At each duty station where staff members having the necessary qualifications are present, one member and one alternate member will be appointed by the Secretary-General directly. One member and one alternate member will also be appointed by the Secretary-General from a list of four staff members presented by the staff representative body at the duty station concerned.

62. Article 4 provides that the Disciplinary Board will be divided into two sections to be located in New York and Geneva. However, when it is found necessary for a particular case, and when staff members having the requisite qualifications have been appointed as members or alternate members of the Disciplinary Board at a given duty station, the Chairperson or Alternate Chairperson could travel to that duty station to hear the case.

63. Article 5 of the draft statute deals with promulgation by the Board of rules of procedure and describes the manner in which the staff will be consulted on the elaboration of those rules.

64. Article 6 defines the two kinds of disciplinary cases that are receivable by the Disciplinary Board, namely, requests for advice on allegations of misconduct presented against a staff member pursuant to staff rule 110.4, and appeals against summary dismissal imposed by the Secretary-General pursuant to staff regulation 10.2.

65. Article 7 of the draft statute sets out the powers of the Board, which, on requests for advice on allegations of misconduct, may recommend that one or more of the disciplinary measures set out in staff rule 110.3 be imposed, or that the charges be dropped. On appeals against summary dismissal, the Board may recommend that the decision be maintained, rescinded or reduced to a lesser penalty. The Board may also make any other recommendations it sees fit in the interest of justice. In all cases, the Board only acts in an advisory capacity, thus respecting the Charter requirement that it is the Secretary-General who is responsible for ensuring that the staff meet the standards of integrity required by article 101, paragraph 3, of the Charter. Article 8 of the draft statute specifies that, as is the case at present, recommendations will be made by a majority vote.

66. Article 9 of the draft statute deals with appeals against decisions taken after advice of the Disciplinary Board. Appeals will be made to the Administrative Tribunal on the same grounds as at present. Article 9.2 remedies a defect in the present system where staff members are not entitled to receive a copy of the report before a decision has been taken, which may make it difficult to pursue the matter in a timely fashion. The new text provides that a staff member whose case has been completed in the Disciplinary Board will have the right to obtain a copy of the report after 60 days, even if no decision has been taken.

67. Article 10 deals with amendment of the statute, which will be made by the Secretary-General and reported to the Assembly.

C. Appointment of a Legal Officer to the Panel of Counsel

68. In line with the professionalization of the justice system, the Secretary-General proposes to create a post of Legal Officer at the P-4 level to serve full time on the Panel of Counsel. The new Legal Officer will be able to advise staff as to whether they may have a valid case and, if so, how to proceed, either at the early stage of reconciliation and resolution of disputes or before the Arbitration Board. The Legal Officer will also advise staff members who are the object of disciplinary proceedings. Furthermore, the Legal Officer will be the official responsible for the Panel of Counsel, and will provide advice to Panel of Counsel members in need of legal backstopping. A General Service post, at the principal level, would also be required to assist the Legal Officer. Resources will be provided for the training of Panel of Counsel members.

IV. FINANCIAL ASPECTS OF THE PROPOSED REFORM

69. The additional requirements for the biennium 1996-1997 resulting from the proposals outlined in the present report amount to $1,536,500, broken down as follows:

	$
Establishment of new posts	587 900
1 Coordinator, D-1 (para. 12)	
2 Administrative Review Officers, 1 P-5, 1 P-4 (para. 14)	
1 Legal Officer, P-4 (para. 68)	
1 General Service (para. 68)	
Compensation for Chairman and Alternate Chairman of the Arbitration Board (para. 45)	516 700
Compensation for members of the Arbitration Board (para. 45)	106 000
Travel of the Coordinator (para. 12)	41 300
Travel and subsistence for members of the Arbitration Board to attend sessions of the Board (para. 45)	284 600
TOTAL	1 536 500

In the proposed programme budget for the biennium 1996-1997, an amount of $1,012,800 is included for the reform of the internal justice system. The revised estimates amount to $1,536,500, an increase of $523,700 over the original estimates. This increase is attributable to the fact that some of the costs included in the proposed programme budget were inadvertently estimated for one year instead of two and that, initially, it was envisaged that the Alternate Chairperson would serve on a part-time rather than a full-time basis, as indicated in paragraph 41. This amount will be sought under the procedure established by the General Assembly for the use of the contingency fund.

V. OBSERVATIONS

70. As indicated earlier to the General Assembly, the staff have expressed support for the basic concepts contained in the report of the Secretary-General on the reform of the internal system of justice dated 8 November 1994 (A/C.5/49/13). Those concepts have now been further elaborated and refined. In formulating the proposals contained in the present report, the representatives of the Secretary-General again consulted extensively with the staff, who expressed full support for the reform and for the immediate implementation of all its features.

71. At the same time, and while recognizing that the following matters go significantly beyond present United Nations juridical practice and were not discussed in the concept report of 8 November 1994, the staff wish to put on record their view that (a) outside counsel should be allowed in cases submitted for binding arbitration to the Arbitration Board, and (b) the two constraints flowing from the statute and jurisprudence of the Administrative Tribunal, namely, with regard to specific performance and the determination of the damages that can be awarded, should not be applied in the functioning of the Arbitration Board.

72. The Secretary-General notes that the reform provides as part of the Panel of Counsel a full-time Legal Officer to represent the staff and that training resources will be provided for the volunteer staff who are members of the Panel of Counsel. Moreover, he is of the opinion that it would not be appropriate or prudent to allow outside counsel before the Arbitration Board. Additionally, the Secretary-General believes that the powers of the Board should be no greater than those of the United Nations Administrative Tribunal. The amendments proposed in the present report in relation to the statute of the Tribunal are limited to the technical changes required to allow for the introduction of binding arbitration.

73. Finally, the Secretary-General notes that the entire system, as well as the statute and role of the Administrative Tribunal, will be reviewed when the new system has been tried out and evaluated for a period of at least two years.

Notes

1/ Official Records of the General Assembly, Fortieth Session, Supplement No. 7 (A/40/7), para. 70.

2/ The United Nations Children's Fund and the United Nations Development Programme have established disciplinary mechanisms distinct from those applicable to the staff of the Secretariat, and will continue to use those mechanisms for the time being.

ANNEX I

Proposed changes to the Staff Regulations and consequential changes to the Staff Rules

A. Appeals

Current text	Amended text
Staff regulation 11.1	Staff regulation 11.1
"The Secretary-General shall establish administrative machinery with staff participation to advise him in case of any appeal by staff members against an administrative decision alleging the non-observance of their terms of appointment, including all pertinent regulations and rules."	"The United Nations Arbitration Board, in accordance with the terms of its statute as promulgated by the Secretary-General, shall be competent, under conditions and procedures prescribed therein, to hear appeals by staff members against an administrative decision alleging the non-observance of their terms of appointment, including all pertinent regulations and rules or to make recommendations or decisions as may be prescribed by its statute."
Staff regulation 11.2	Staff regulation 11.2
"The United Nations Administrative Tribunal shall, under conditions prescribed in its statute, hear and pass judgement upon applications from staff members alleging non-observance of their terms of appointment, including all pertinent regulations and rules."	"The United Nations Administrative Tribunal shall, under conditions prescribed in its statute, hear and pass judgement upon applications from staff members alleging non-observance of their terms of appointment, including all pertinent regulations and rules, and shall also hear and pass judgement upon appeals by the Secretary-General or staff members against decisions of the Arbitration Board."

Current text	Amended text
Staff rule 111.1 (a)	Staff rule 111.1 (a)
"Joint appeals boards shall be established in New York, Geneva, Vienna, Nairobi and at such other duty stations as may be designated by the Secretary-General to consider and advise the Secretary-General regarding appeals filed under the terms of staff regulation 11.1."	Deleted; dealt with in the statute.
Staff rule 111.1 (b)	Staff rule 111.1 (b)
"(b) Each Joint Appeals Board shall be composed of: "(i) Chairpersons appointed by the Secretary-General from among a list presented by the joint staff/management machinery in respect of the staff representative body or bodies at the duty station at which the Board is established; "(ii) Members appointed by the Secretary-General; "(iii) An equal number of members elected by ballot of the staff under the jurisdiction of the Board. "The number of chairpersons and members of each Board shall be determined by the Secretary-General upon recommendation of the joint staff/management machinery in respect of the staff representative body or bodies at the duty station at which the Board is established."	Deleted; dealt with in the statute and rules of the Arbitration Board.

Current text	Amended text
Staff rule 111.1 (c)	Staff rule 111.1 (c)
"The chairpersons and members of the Joint Appeals Board shall be appointed or elected for two years, shall be eligible for reappointment or re-election and shall remain in office until their successors are appointed or elected."	Deleted; dealt with in the statute and rules of procedure of the Arbitration Board.
Staff rule 111.1 (d)	Staff rule 111.1 (d)
"A chairperson may be removed from a Joint Appeals Board by the Secretary-General upon recommendation of the joint staff/management machinery in respect of the staff representative body or bodies of the duty station at which the Board is established. The members appointed by the Secretary-General may be removed by him. The members elected by the staff may be recalled by a majority vote of the staff under the jurisdiction of the Board concerned, taken at the initiative of any staff representative body at the duty station at which that Board is established."	Deleted; dealt with in the statute.
Staff rule 111.1 (e)	Staff rule 111.1 (e)
"Each Joint Appeals Board shall establish its own rules of procedure, which shall specify how its presiding officer and, where necessary, any alternate presiding officers shall be selected from among the chairpersons."	Deleted; dealt with in the statute.

Current text	Amended text
Staff rule 111.1 (f)	Staff rule 111.1 (f)
"Each Joint Appeals Board may, by a majority vote of all its chairpersons and members, recommend to the Secretary-General changes in the present chapter of the Staff Rules."	Deleted; dealt with in the statute and rules of procedure of the Arbitration Board.
Staff rule 111.1 (g)	Staff rule 111.1 (g)
"The secretariat of each Joint Appeals Board shall consist of a secretary and such other staff as may be required for its proper functioning."	Deleted; dealt with in the statute.
Staff rule 111.2 (a)	Staff rule 111.2 (a)
"(a) A staff member wishing to appeal an administrative decision, pursuant to staff regulation 11.1, shall, as a first step, address a letter to the Secretary-General, requesting that the administrative decision be reviewed; such a letter must be sent within two months from the date the staff member received notification of the decision in writing.	"(a) A staff member wishing to appeal an administrative decision, pursuant to staff regulation 11.1, shall, as a first step, address a letter to the Secretary-General requesting that the administrative decision be reviewed; such a letter must be sent within <u>three</u> months from the date the staff member received notification of the decision in writing.
"(i) If the Secretary-General replies to the staff member's letter, he or she may appeal against the answer within one month of the receipt of such reply;	"(i) If the Secretary-General replies to the staff member's letter, he or she may appeal against the answer within one month of the receipt of such reply;

Current text	Amended text
"(ii) If the Secretary-General does not reply to the letter within one month in respect of a staff member stationed in New York, or within two months in respect of a staff member stationed elsewhere, the staff member may appeal against the original administrative decision within one month of the expiration of the time-limit specified in this subparagraph for the Secretary-General's reply."	"(ii) If the Secretary-General does not reply to the letter within <u>two months</u> in respect of a staff member stationed in New York, or within <u>three</u> months in respect of a staff member stationed elsewhere, the staff member may appeal against the original administrative decision within one month of the expiration of the time-limit specified in this subparagraph for the Secretary-General's reply."
<u>Staff rule 111.2 (b)</u>	<u>Staff rule 111.2 (b)</u>
"(b) The Secretary-General, in reviewing the administrative decision in question, may, with the consent of the staff member or at the latter's request, seek the assistance of a chairperson or member of the appropriate Joint Appeals Board, to be designated by its presiding officer, with a view to reaching a conciliatory conclusion of the matter. This procedure is without prejudice to the right of the staff member to pursue an appeal under the provisions of this rule."	"(b) The Secretary-General, <u>the staff member or the Chairperson of the Board may refer the matter for conciliation in accordance with rules to be established by the Arbitration Board</u>. This procedure is without prejudice to the right of the staff member to pursue an appeal under the provisions of this rule <u>and the statute of the Arbitration Board</u>."
<u>Staff rule 111.2 (c)</u>	<u>Staff rule 111.2 (c)</u>
"(c) Neither a request for administrative review under paragraph (a) above nor the filing of an appeal under paragraph (d) below shall have the effect of suspending action on the contested decision.	"(c) Neither a request for administrative review under paragraph (a) above nor the filing of an appeal under paragraph (d) below shall have the effect of suspending action on the contested decision.

Current text	Amended text
"(i) However, the staff member concerned may request a suspension of action on such decision by writing to the Secretary of the appropriate Joint Appeals Board under paragraph (d) below. The request shall set forth the relevant facts and indicate how implementation would directly and irreparably injure the staff member's rights;	"(i) However, the staff member concerned may request a suspension of action on such decision by writing to the Secretary of the appropriate Arbitration Board section under conditions specified in its statute. The request shall set forth the relevant facts and indicate how implementation would directly and irreparably injure the staff member's rights;"
"(ii) Upon receipt of such a request, a panel of the Board shall be promptly constituted, and shall act expeditiously. If the panel, after considering the views of both parties, determines that the decision has not been implemented and that its implementation would result in irreparable injury to the appellant, it may recommend to the Secretary-General the suspension of action on that decision:	(ii) Deleted; dealt with in the statute.
"a. Until the time-limits specified in subparagraph (a) (i) or (ii) have passed without an appeal having been filed, or	

Current text	Amended text
"b. If an appeal is filed, until a decision on the appeal is taken;	
"(iii) The Secretary-General's decision on such a recommendation is not subject to appeal."	
Staff rule 111.2 (d)	Staff rule 111.2 (d)
"(d) An appeal pursuant to paragraph (a) or a request for suspension of action pursuant to paragraph (c) above shall be filed with the Secretary of the appropriate Joint Appeals Board, to be determined as follows:	"(d) An appeal pursuant to paragraph (a) or a request for suspension of action pursuant to paragraph (c) above shall be filed with the Secretary of the appropriate Arbitration Board section, to be determined as follows:
"(i) With respect to staff members serving at a duty station at which a Board has been established or who are administered by organizational units located at such duty station, it shall be the Board;	"(i) With respect to staff members serving at a duty station at which an Arbitration Board section has been established or who are administered by organizational units located at such duty station, it shall be that section;
"(ii) With respect to former staff members who last served at a duty station at which a Board has been established or who were administered by organizational units located at such a duty station, it shall be that Board;	"(ii) With respect to former staff members who last served at a duty station at which an Arbitration Board section has been established or who were administered by organizational units located at such a duty station, it shall be that section;

Current text	Amended text
"(iii) With respect to all other staff members and all other former staff members, it shall be the Board established in New York, provided that the Secretary-General may decide, at the request of the staff member, to refer the appeal to another one of the Boards or to establish an appropriate ad hoc body. Such staff members or former staff members may meet the time-limits specified in subparagraphs (a) (i) or (ii) by delivering the requisite submissions within such limits to any office of the United Nations for transmission to the appropriate Board."	"(iii) With respect to staff members and former staff members, other than staff serving in peace-keeping missions located in, or administered from, Europe, it shall be the Arbitration Board section located at Geneva; "(iv) With respect to all other staff members and all other former staff members, it shall be the Arbitration Board section established in New York, provided that the Secretary-General may decide, at the request of the staff member, to refer the appeal to the Geneva section of the Arbitration Board or to establish an appropriate ad hoc body. Such staff members or former staff members may meet the time-limits specified in subparagraphs (a) (i) or (ii) by delivering the requisite submissions within such limits to any office of the United Nations for transmission to the appropriate Arbitration Board section."
	Staff rules 112 (e) to (p)
	Deleted; dealt with in the statute.

Current text	Amended text
	Staff rule 111.3
No comparable provision.	(Transitional provision) "Former staff rules 111.1 and 111.2 shall be deemed to be in effect in respect of appeals against administrative decisions made prior to 1 January 1996, a/ unless the staff member who made the appeal requests that the appeal be considered by the Arbitration Board."

a/ The Secretary-General is determined to take all appropriate actions to ensure that the reform is ready for implementation as of 1 January 1996. Should circumstances beyond his control make this impossible, a subsequent implementation date will be announced in consultation with the staff.

B. Discipline

Current text	Amended text
Staff rule 110.1 Misconduct	Staff rule 110.1 Misconduct
"Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant, may amount to unsatisfactory conduct within the meaning of staff regulation 10.2, leading to the institution of disciplinary proceedings and the imposition of disciplinary measures for misconduct."	No change.
Staff rule 110.2 Suspension during investigation and disciplinary proceedings	Staff rule 110.2 Suspension during investigation and disciplinary proceedings
"(a) If a charge of misconduct is made against a staff member and the Secretary-General so decides, the staff member may be suspended from duty during investigation and pending completion of disciplinary proceedings for a period which should normally not exceed three months. Such suspension shall be with pay unless, in exceptional circumstances, the Secretary-General decides that suspension without pay is appropriate. The suspension shall be without prejudice to the rights of the staff member and shall not constitute a disciplinary measure.	(a) No change.
"(b) A staff member suspended pursuant to paragraph (a) shall be given a written statement of the reason for the suspension and its probable duration.	(b) No change.

Current text	Amended text
"(c) If a suspension pursuant to paragraph (a) is without pay and the charge of misconduct is subsequently not sustained, any salary withheld shall be restored."	(c) No change.
<u>Staff rule 110.3</u> <u>Disciplinary measures</u>	<u>Staff rule 110.3</u> <u>Disciplinary measures</u>
"(a) Disciplinary measures may take one or more of the following forms:	(a) No change.
"(i) Written censure by the Secretary-General;	
"(ii) Loss of one or more steps-in-grade;	
"(iii) Deferment, for a specified period, of eligibility for within-grade increment;	
"(iv) Suspension without pay;	
"(v) Fine;	
"(vi) Demotion;	
"(vii) Separation from service, with or without notice or compensation in lieu thereof, notwithstanding rule 109.3;	
"(viii) Summary dismissal.	
"(b) The following measures shall not be considered to be disciplinary measures, within the meaning of this rule:	(b) No change.
"(i) Reprimand, written or oral, by a supervisory official;	
"(ii) Recovery of monies owed to the Organization;	
"(iii) Suspension pursuant to rule 110.2."	

Current text	Amended text
Staff rule 110.4 Due process	Staff rule 110.4 Due process
"(a) No disciplinary proceedings may be instituted against a staff member unless he or she has been notified of the allegations against him or her, as well as of the right to seek the assistance in his or her defence of another staff member or retired staff member, and has been given a reasonable opportunity to respond to those allegations.	(a) No change.
"(b) No staff member shall be subject to disciplinary measures until the matter has been referred to a Joint Disciplinary Committee for advice as to what measures, if any, are appropriate, except that no such advice shall be required:	"(b) No staff member shall be subject to disciplinary measures until the matter has been referred to the United Nations Disciplinary Board established pursuant to staff rule 110.5 for advice as to what measures, if any, are appropriate, except that no such advice shall be required:
"(i) If referral to the Joint Disciplinary Committee is waived by mutual agreement of the staff member concerned and the Secretary-General;	"(i) If referral to the United Nations Disciplinary Board is waived by mutual agreement of the staff member concerned and the Secretary-General;
"(ii) In respect of summary dismissal imposed by the Secretary-General in cases where the seriousness of the misconduct warrants immediate separation from service.	"(ii) In respect of summary dismissal imposed by the Secretary-General in cases where the seriousness of the misconduct warrants immediate separation from service.

Current text	Amended text
"(c) In cases of summary dismissal imposed without prior submission of the case to a Joint Disciplinary Committee in accordance with subparagraphs (b) (i) and (ii), the staff member or former staff member may, within two months of having received written notification of the measure, request that the measure be reviewed by such a Committee. A request shall not have the effect of suspending the measure. After the advice of the Committee has been received, the Secretary-General shall decide as soon as possible what action to take in respect thereof. An appeal in respect of such a decision may not be submitted to the Joint Appeals Board.	"(c) In cases of summary dismissal imposed without prior submission of the case to the United Nations Disciplinary Board in accordance with subparagraphs (b) (i) and (ii), the staff member or former staff member may, within two months of having received written notification of the measure, appeal to the United Nations Disciplinary Board. An appeal shall not have the effect of suspending the measure. After the advice of the United Nations Disciplinary Board has been received, the Secretary-General shall decide as soon as possible what action to take in respect thereof. An appeal in respect of such a decision may not be submitted to the Arbitration Board.
"(d) An appeal in respect of a disciplinary measure considered by a Joint Disciplinary Committee pursuant to either paragraph (b) or (c) may be submitted directly to the United Nations Administrative Tribunal."	"(d) An appeal in respect of a disciplinary measure considered by the United Nations Disciplinary Board pursuant to either paragraph (b) or (c) may be submitted directly to the United Nations Administrative Tribunal."
Staff rule 110.5 Joint Disciplinary Committees	Staff rule 110.5 United Nations Disciplinary Board
"(a) A standing Joint Disciplinary Committee is established and shall be available to advise the Secretary-General at his request in disciplinary matters at Headquarters; comparable standing committees may be established in the United Nations Office at Geneva, in the United Nations Office at Vienna and at such other offices as may be designated by the Secretary-General.	"(a) The Secretary-General shall establish a United Nations Disciplinary Board which shall be available to advise the Secretary-General at his request in disciplinary matters in accordance with its statute. The United Nations Disciplinary Board is authorized to deal with disciplinary matters as is provided in its statute."
"(b) The Secretary-General may also establish ad hoc Joint Disciplinary Committees at these or other duty stations for a particular case or series of cases."	(b) Deleted; the method of dealing with cases away from Headquarters is set out in the statute and will be elaborated in the rules of procedure of the Disciplinary Board.

Current text	Amended text
Staff rule 110.6 Composition of Joint Disciplinary Committees	Staff rule 110.6 Composition of the Disciplinary Board
"(a) Each standing Joint Disciplinary Committee shall be composed of:	(a) Deleted; the composition of the Disciplinary Board is set out in article 3 of its statute.
"(i) Chairpersons, appointed by the Secretary-General after consultation with the staff representative body or bodies at the duty station at which the Committee is established;	
"(ii) Members appointed by the Secretary-General;	
"(iii) Members elected by the staff at the duty station at which the Committee is established.	
"(b) If necessary, additional members may be selected at any time in the same manner as indicated in paragraph (a).	(b) Deleted; the composition of the Disciplinary Board is set out in article 3 of its statute.
"(c) The chairpersons and members of the Joint Disciplinary Committee shall be appointed or elected for two years, shall be eligible for reappointment or re-election and shall remain in office until their successors are appointed or elected as long as they are staff members assigned to the duty station of the Committee.	(c) Deleted; the term of office of the membership of the Disciplinary Board is set out in article 3 of its statute.

Current text	Amended text
"(d) A chairperson may be removed from the Joint Disciplinary Committee by the Secretary-General after consultation with the staff representative body or bodies at the duty station at which the Committee is established. The members appointed by the Secretary-General may be removed by him. The members elected by the staff may be recalled by a majority vote of the staff at the duty station at which the Committee is established, taken at the initiative of any staff representative body at that duty station.	(d) Deleted; removal of the chairperson, alternate chairperson and members and alternate members is dealt with in article 3 of the statute of the Disciplinary Board.
"(e) The Secretary-General shall, in consultation with the staff representative body or bodies at the duty station at which a Joint Disciplinary Committee is established, appoint a Presiding Officer from among the panel of chairpersons.	(e) Deleted; the location of panels is set out in article 4 of the statute of the Disciplinary Board.
"(f) For the consideration of each case, a panel of the Joint Disciplinary Committee shall be constituted by the Presiding Officer as follows: "(i) A chairperson; "(ii) A member from among those appointed by the Secretary-General; "(iii) A member from among those elected by the staff.	(f) Deleted; the constitution of panels is set out in article 4 of the statute of the Disciplinary Board.

Current text	Amended text
The Presiding Officer, at the request of either party, may disqualify the chairperson or any member from the consideration of the specific case, if in the opinion of the Presiding Officer the action is warranted by the relation of that member to the staff member whose case is to be considered or by any possible conflict of interest. The Presiding Officer may also excuse any member at that member's request from the consideration of a specific case.	The concluding part of rule 110.6 (f) is deleted; the matter is dealt with in article 5 of the statute of the Disciplinary Board.
"(g) Ad hoc Joint Disciplinary Committees shall be composed in a manner similar to that of the panels of standing Committees, except that instead of members elected by the staff there shall be substituted members appointed by the staff representative body or bodies at the duty station at which the Committee is established, provided that if no appointments are made within a period set by the Secretary-General he may make the appointments after consultation with the staff representative body or bodies.	(g) Deleted; the composition of the panels considering disciplinary cases away from headquarters is dealt with in article 3 of the statute of the Disciplinary Board.
"(h) Any case relating to a staff member serving at a duty station where a standing Joint Disciplinary Committee is established shall be referred to that Committee, unless the Secretary-General considers there is a good reason to refer the case to a standing Committee at a different duty station or to an ad hoc Committee at the same or another duty station."	(h) Deleted; article 4 of the statute of the disciplinary board deals with the geographic jurisdiction of the panels.

Current text	Amended text
Staff rule 110.7 Joint Disciplinary Committee procedure	Staff rule 110.7 Disciplinary Board procedure
"(a) In considering a case, the Joint Disciplinary Committee shall act with maximum dispatch and shall make every effort to provide its advice to the Secretary-General within four weeks after the case has been submitted to it.	(a) Deleted; the procedures of the Disciplinary Board are dealt with in article 5 of its statute.
"(b) Proceedings before a Joint Disciplinary Committee shall normally be limited to the original written presentation of the case, together with brief statements and rebuttals, which may be made orally or in writing, but without delay. If the Committee considers that it requires the testimony of the staff member concerned or of other witnesses, it may, at its sole discretion, obtain such testimony by written deposition, by personal appearance before the Committee, before one of its members or before another staff member acting as a special master, or by telephone or other means of communication.	(b) Deleted; these matters will be dealt with in the rules of procedure of the Disciplinary Board.
"(c) Each standing Joint Disciplinary Committee shall adopt its own rules of procedure, which shall be consistent with these staff rules and with any applicable administrative instructions, as well as with the requirements of due process. An ad hoc Committee shall apply the rules of procedure of the Headquarters Joint Disciplinary Committee, except to the extent it decides, consistent with the requirements of due process, to apply other such rules.	(c) Deleted; this matter is dealt with in article 5 of the statute of the Disciplinary Board.

Current text	Amended text
"(d) A Joint Disciplinary Committee shall permit a staff member to arrange to have his or her case presented before it by any other staff member or retired staff member at the same duty station where the Committee is established."	(d) Deleted; this matter is dealt with in article 5 of the statute of the Disciplinary Board.
No equivalent rule.	**Staff rule 110.8** **Exclusions** The amendments to staff rules 110.4 (b), (c) and (d), 110.5, 110.6 and 110.7 do not apply to the United Nations Development Programme (and the organs that it administers) or to the United Nations Children's Fund.

ANNEX II

Draft Secretary-General's Bulletin

Statute of the United Nations Arbitration Board
(with explanatory commentary)*

Article 1

Establishment

Pursuant to the authority conferred upon the Secretary-General by staff regulation 11.1, a United Nations Arbitration Board is established by the present statute, to be known as the United Nations Arbitration Board (hereafter "the Arbitration Board").

Commentary to article 1

Article 1 establishes an Arbitration Board to replace the Joint Appeals Board (JAB). The terms of article 1 are based on article 1 of the statute of the Administrative Tribunal.

Article 2

Competence and jurisdiction

1. The Arbitration Board shall be competent to hear and make recommendations upon appeals by staff members of the United Nations alleging non-observance of their contracts of employment or the terms of appointment of such staff members.

2. With the written agreement of the Secretary-General and the appellant staff member, the Arbitration Board shall, to the extent agreed, be competent to decide upon an appeal by that staff member alleging non-observance of his or her contract of employment or the terms of appointment of such staff member.

3. The words "contracts" and "terms of appointment" in paragraphs 1 and 2 of this article include the Staff Regulations and Rules, all pertinent General Assembly resolutions and decisions, and all subsidiary administrative issuances promulgated thereunder, which are in force at the time of the alleged non-observance, but excluding (a) the Regulations of the United Nations Joint Staff Pension Fund and the rules promulgated thereunder; (b) appeals relating to disciplinary measures and procedures arising from article X (Disciplinary measures) of the Staff Regulations and chapter X (Disciplinary measures and procedures) of the Staff Rules and subsidiary administrative issuances promulgated thereunder; and (c) appeals

* The commentary will be deleted upon promulgation of the Bulletin.

relating solely to appraisal of a staff member's performance; however, the Arbitration Board shall be competent to hear appeals against administrative decisions which stem from performance appraisal and which affect the conditions of service of a staff member.

4. At the request of either party, or at the direction of the Chairperson of the Arbitration Board, or at the direction of a panel of the Arbitration Board dealing with an appeal, the parties may be directed to attempt to conciliate under rules established by the Arbitration Board.

5. The Arbitration Board shall not be competent, however, to deal with any appeals or requests for conciliation where the cause of complaint arose and the appeal was submitted before 1 January 1996, unless the staff member requests that the appeal be considered by the Arbitration Board.

6. In the event of a dispute as to whether the Arbitration Board has competence, the matter shall be settled initially by the Arbitration Board but either party may appeal on error of law to the United Nations Administrative Tribunal.

Commentary to article 2

1. Article 2.1 confers upon the Arbitration Board the powers of JAB, which body it replaces. The Arbitration Board does not deal with pension matters, nor does it deal with matters related to discipline or performance appraisal.

2. Article 2.2 empowers the Arbitration Board to make binding awards with the consent of the Secretary-General and the staff member and to the extent of their agreement. This reflects arbitration practice where arbitration, and the extent of arbitration, is voluntary.

3. Articles 2.1 and 2.2 replace a number of the provisions on the jurisdiction and powers of JAB found in staff rule 111.1, which rule is to be deleted (other parts of this rule and portions of rule 111.2 will be contained in the rules of procedure of the Arbitration Board).

4. Article 2.3 ensures that the Arbitration Board must decide cases according to the terms of appointment of staff. The provision is modelled on article 2 of the statute of the Tribunal. It should be noted that a number of matters are excluded from the jurisdiction of the Arbitration Board because there are other mechanisms to deal with such appeals. Thus, matters relating to pensions and discipline are excluded, as are appeals relating to appraisal of performance. However, the Arbitration Board will have jurisdiction over administrative decisions which, in reliance upon appraisals of performance, affect a staff member's contractual status, such as promotion or separation from service.

5. Article 2.4 empowers the Arbitration Board to direct that an attempt be made to conciliate. However, the Arbitration Board itself may not become involved in settlement discussions, nor should it be made aware of the content of settlement proposals.

6. Article 2.5 is a transitional measure. The date of effect of the Statute is tentative.

7. Article 2.6 gives the Arbitration Board the power to determine whether it has jurisdiction, subject to a right of appeal to the Tribunal by either party on the ground of error of law. Where an issue of law is predicated on the relevance of certain factors, as is the case when an issue concerning competence or receivability revolves around what the relevant facts are with respect to the issue of timeliness, those factors would also be considered by the Tribunal on appeal.

Article 3

Membership

1. The Arbitration Board shall be composed of ten members, a Chairperson, an Alternate Chairperson, four members and four alternate members. No two of the membership may be nationals of the same State. The membership of the Arbitration Board shall have the following qualifications:

(a) Hold a law degree;

(b) Have been admitted to the practice of law and a member in good standing of a national bar, labour arbitration association or equivalent for at least ten years;

(c) Have experience in labour arbitration;

(d) Have no employment links with the United Nations in the two years prior to appointment.

2. The Chairperson and Alternate Chairperson of the Arbitration Board shall be appointed by the Secretary-General, after consultation with the staff through the joint staff/management machinery established pursuant to staff regulation 11.2, for one non-renewable three-year term.

3. Four members and four alternate members shall be appointed by the Secretary-General after consultation with the staff through the joint staff/management machinery established pursuant to staff regulation 8.2 for a term of two years, which may be renewed for a further period of two years.

4. Remuneration of membership of the Arbitration Board will be established by the Secretary-General, revised from time to time and reported to the Assembly.

5. The membership of the Arbitration Board will have the status of officials of the United Nations while performing functions under this statute. The membership of the Arbitration Board are not staff members of

the United Nations and are ineligible for appointment as staff members of the United Nations after completion of their term of office.

6. Neither the Chairperson, the Alternate Chairperson, any member or any alternate member of the Arbitration Board can be dismissed by the Secretary-General, except for misconduct and after having had the opportunity to respond to the charges of misconduct. Such person may institute, within ninety days of dismissal, an application directly to the Administrative Tribunal in accordance with its statute as if that person was a staff member governed by the Staff Regulations and Rules.

Commentary to article 3

1. Articles 3.1 to 3.3 define the qualifications of the arbitrators and the manner and duration of their appointment.

2. Articles 3.4 to 3.6 deal with the remuneration, status and removal of members of the Arbitration Board.

Article 4

Panels and Chairperson

1. The Arbitration Board will be divided into two sections, to be located in New York and Geneva. The Geneva section will hear appeals from staff members and former staff members located in or administered from Europe, including all staff of the Office of the United Nations High Commissioner for Refugees but excluding staff serving in peace-keeping missions. The New York section will hear appeals from staff and former staff located elsewhere and appeals from staff or former staff serving in peace-keeping missions.

2. Cases will be heard by a panel of three, composed of the Chairperson, or Alternate Chairperson, and two members, or alternates.

3. The Chairperson will preside over each panel hearing an appeal unless unable to so do, in which case the panel concerned will be presided over by the Alternate Chairperson.

4. When it appears that the New York and Geneva sections of the Arbitration Board are seized of cases that may lead to different results on the same issue, the cases may be consolidated, where possible, and decided by one section rather than both.

Commentary to article 4

Article 4 defines the structure and functioning of the panels that will hear appeals.

Article 5

Rules of procedure

1. The Arbitration Board, sitting with a majority of its members, shall establish its own rules, which shall protect the due process rights of the Secretary-General and the staff, provide for effective and prompt hearing of appeals and provide a mechanism for dealing with requests for suspension of action within ten days of receipt. A draft of such rules, or any proposed amendments thereto, shall be submitted for comment to the Secretary-General, whose comments shall reflect the views of the Staff Management Coordination Committee established pursuant to staff regulation 8.2.

2. A panel may decide, for cause, to waive any of the rules of procedure. The reason for such waiver shall be set out in its recommendation or award.

3. The Arbitration Board shall publish its rules.

Commentary to article 5

1. As the Arbitration Board is, and must be, an independent body, it must establish its own rules of procedure although it is appropriate that the Board consult the Secretary-General for his comments. It is also essential, in order to foster the use of binding arbitration and to comply with the requirements of staff regulation 8.1, that the Secretary-General transmit to the Board the comments of staff and management through the joint staff/management machinery established pursuant to staff regulation 8.2.

2. A panel may waive any of the rules of procedure, but must explain why the rule is being waived.

Article 6

Receivability

An appeal shall be receivable if it is filed within the time-limits and the conditions prescribed in staff rule 111.2 (a), as in force at the time of the alleged non-observance. The Arbitration Board may waive those time-limits.

Commentary to article 6

Article 6 requires that staff file an appeal within stated time-limits for it to be receivable by the Arbitration Board, unless the Board waives those time-limits.

Article 7

Powers

1. A panel of the Arbitration Board shall be competent to consider a request from an appellant for a suspension of action on the contested decision.

2. Upon receipt of a request for a suspension of action pursuant to paragraph 1 of this article, a panel of the Arbitration Board shall be promptly constituted and shall act expeditiously. If the panel, after considering the views of both parties, determines that the decision has not been implemented and that implementation of the Secretary-General's decision would result in irreparable injury to the appellant, it may recommend to the Secretary-General that he suspend action on that decision until it has completed its deliberations on the case or for a stated period. If the panel is exercising its powers pursuant to article 2.2 of this statute, it may, to the extent agreed between the parties in the agreement to submit to binding arbitration, order a stay of action until it has completed its deliberations or for a stated period.

3. A decision of the Secretary-General on a recommendation of the panel for a suspension of action is not subject to appeal.

4. If a panel of the Arbitration Board finds that there has been non-observance of the contract of employment or the terms of employment of an appellant, it may recommend or order, as the case may be, the rescinding of the specific decision or specific performance of the obligation invoked. However, at the same time, it shall recommend or fix, as the case may be, the amount of compensation to be paid to the appellant if, within thirty days of the notification of the recommendation or the binding award, as the case may be, the Secretary-General decides in the interest of the United Nations that the appellant shall be compensated without further action being taken in the case; provided that such compensation shall be in line with that awarded by the United Nations Administrative Tribunal in similar cases and shall not exceed the equivalent of two years' net base salary of the appellant. The panel of the Arbitration Board may, however, in exceptional cases when it considers it justified, recommend or order, as the case may be, the payment of a higher indemnity. A statement of the reasons for the panel's recommendation or award shall be included in the panel's recommendation or award.

5. A panel of the Arbitration Board may recommend or award, as the case may be, damages to compensate a staff member for actual loss. The Arbitration Board may not award, or recommend payment of, exemplary or punitive damages.

6. A panel of the Arbitration Board shall be bound by the staff regulations and rules, by the legislative issuances described in Article 2.3 and by the jurisprudence of the United Nations Administrative Tribunal. A panel shall consider its own prior decisions and

recommendations, and those of other panels, but shall not be bound by those earlier decisions or recommendations.

Commentary to article 7

1. Articles 7.1 to 7.3 deal with suspension of action. When the Arbitration Board is acting in an advisory capacity, its powers are the same as JAB. In cases of binding arbitration, its powers to direct a stay of action will be to the extent agreed by the parties in their agreement to arbitrate.

2. Article 7.4 is based on the powers granted to the Tribunal in article 9.1 of its statute.

3. Article 7.5 empowers the Arbitration Board to award damages to the extent permitted by the jurisprudence of the Administrative Tribunal. The Arbitration Board is not, however, given power to award exemplary or punitive damages. National legal systems allowing for punitive or exemplary damages usually do so only where there has been a deliberate misdeed or gross negligence; in such cases, the proper course of action for the Organization would be to bring disciplinary charges against the offending staff member or recovery action from him or her of the damages paid by the Organization for the actual loss suffered by the victim.

4. Article 7.6 provides that panels of the Arbitration Board will be bound by the Staff Regulations and Rules, including all subsidiary legislative issuances more fully described in article 2.3 of the statute and by the jurisprudence of the Administrative Tribunal, but will not be bound by earlier decisions of the same or other panels of the Arbitration Board.

Article 8

Recommendations and awards

1. A recommendation or binding award of the Arbitration Board shall set out the findings of fact that led to its recommendation or award, as well as its assessment of the evidence which led to the Board's adoption of those findings of fact.

2. A panel of the Arbitration Board shall take all decisions, whether on recommendations or binding awards, by majority vote.

3. Binding awards of a panel of the Arbitration Board shall be published in the working languages of the Board, namely, English and French.

Commentary to article 8

1. Article 8.1 takes account of the fact that, in an initial appeal, the parties frequently dispute material issues of fact. This provision directs the Arbitration Board to include in its recommendations or binding awards its

findings on all material issues of fact, and to set out its assessments of the evidence on which the Board relied to reach its findings.

2. Binding awards will be published in similar fashion to the judgements of the Administrative Tribunal.

Article 9

Appeals

1. If the Secretary-General has rejected a recommendation of the Arbitration Board or has not taken a decision on a recommendation of the Arbitration Board within thirty days of the communication of the recommendation, or if the recommendation accepted by the Secretary-General is not favourable to the appellant, the staff member has the right of appeal to the Administrative Tribunal in accordance with article 7 of the statute of the Tribunal.

2. Within ninety days of communication of a binding award of the Arbitration Board, either party may appeal to the Administrative Tribunal, but only on one or more of the following grounds:

(a) Error of law;

(b) Fundamental error of procedure that has occasioned a miscarriage of justice;

(c) Fundamental error of fact that has occasioned a miscarriage of justice.

Commentary to article 9

1. Article 9.1 is based on the statute of the Tribunal and essentially reproduces the existing appeal system in respect of recommendations of the Arbitration Board.

2. Article 9.2 applies in cases where the Arbitration Board is making binding awards and it limits the grounds of appeal to the Tribunal to error of law as well as fundamental error of procedure or fact that has occasioned a miscarriage of justice. The purpose of this limitation is to foster the speedy resolution of disputes and to reserve for the Tribunal cases that involve issues of law, matters of general application or cases involving miscarriage of justice.

Article 10

Amendment

The present statute may be amended by the Secretary-General after the General Assembly has approved the proposed change.

Commentary to article 10

This article provides that changes to the statute of the Arbitration Board require the approval of the General Assembly since awards of the Board will bind the Organization. This provision is based on staff regulation 12.3, which requires that staff rules be submitted to the Assembly for ratification (staff regulation 12.3).

ANNEX III

Revisions to the Statute of the United Nations Administrative Tribunal

Texts and commentary with comparative table

A. Amendments to article 2

(a) Insert a new article 2.2 to read:

"The Tribunal shall also be competent to hear and pass judgement upon applications from the Secretary-General or a staff member appealing from an award of the United Nations Arbitration Board (hereafter 'the Arbitration Board') on the grounds that:

"(a) The Arbitration Board erred in law; or

"(b) The Arbitration Board had committed a fundamental error of fact that occasioned a failure of justice; or

"(c) The Arbitration Board had committed a fundamental error of procedure that occasioned a failure of justice."

(b) Renumber article 2.2 as article 2.3 and insert new articles 2.3 (c) and (d) as follows:

"(c) To the Secretary-General of the United Nations when appealing an award of the Arbitration Board;

"(d) To the Chairperson, Alternate Chairperson, a member or alternate member of the Arbitration Board in the event of dismissal by the Secretary-General."

Commentary

1. The new article 2.2 grants competence to the Tribunal to "hear and pass judgement upon applications" (to use the language of article 2.1) by either the Secretary-General of the United Nations or a member of staff who is appealing from an award of the Arbitration Board.

2. The amended and renumbered articles 2.3 (c) and (d) reflect the fact that, under the statute of the Arbitration Board, the Tribunal is open to the Secretary-General as an applicant, as well as to the staff of the United Nations and to an arbitrator who has been dismissed.

3. The Tribunal will have to promulgate rules of procedure to regulate the manner of the making and hearing of appeals from awards of the Arbitration Board.

B. Amendments to article 6

Drafting amendments consequential to changes to article 2

Amend article 6.2 (d) and (e) as follows:

Replace the phrase "paragraph 2 of article 2" with the phrase "paragraph 3 of article 2".

Commentary

This amendment takes account of the fact that paragraph 2 of article 2 has been renumbered as paragraph 3.

C. Amendments to article 7

1. Drafting amendments (to take account of the United Nations Arbitration Board) (new language underlined)

(a) Amend article 7.1 as follows:

"An application shall not be receivable unless the person concerned has previously submitted the appeal to the joint appeals body provided for in the staff regulations or to the Arbitration Board established pursuant to the United Nations Staff Regulations and the latter has communicated its opinion or award as the case may be to the Secretary-General ..."

(b) Amend the opening of article 7.2 as follows:

"In the event that the recommendation of a joint appeals body or the Arbitration Board referred to in paragraph 1 of this article being favourable to the application submitted to it ..."

(c) Amend article 7.3 as follows:

"In the event that the recommendations made by a joint appeals body or the Arbitration Board referred to in paragraph 1 of this article are unfavourable to the applicant, and in so far as this is the case, the application shall be receivable, unless the joint appeals body or Arbitration Board referred to in paragraph 1 of this article unanimously considers that it is frivolous."

(d) Amend article 7.4 as follows:

"An application shall not be receivable unless it is filed within ninety days reckoned from the respective dates and periods referred to in paragraph 2 above, or within ninety days reckoned from the date of the communication of the opinion of the joint appeals body or the Arbitration Board referred to in paragraph 1 of this article containing recommendations unfavourable to the applicant. Nevertheless, the said time-limit on his or her behalf shall be extended to one year if the heirs of a deceased staff member or the trustee of a staff member who is not in a position to manage

his or her own affairs, file the application in the name of the said staff member."

2. Substantive amendments

Amend article 7.6 as follows and insert a new paragraph (b):

"(a) The filing of an application against the recommendation of a joint appeals body or the Arbitration Board referred to in paragraph 1 of this article shall not have the effect of suspending the execution of the decision contested;

"(b) In the event of the filing of an application against an award of the Arbitration Board, action on the award shall be suspended until the application has been dealt with by the Tribunal on the merits."

Commentary

1. Articles 7.1 to 7.4 contain minor amendments to take account of the fact that, for the United Nations, the joint appeals body is replaced by the Arbitration Board. The original language is left for the other organizations that have accepted the Tribunal's statute, except that the second sentence of article 7.4 is deleted, as it related only to the first session of the Tribunal.

2. Article 7.5 is revised to take account of the fact that awards of the Arbitration Board cannot be treated in the same way as recommendations of a JAB since, in the case of recommendations, the Secretary-General had taken the decision that he considers correct. In the case of an award, the Secretary-General may be appealing a decision that he considers incorrect. The basic rule is therefore reversed: the award is not implemented until the Tribunal has dealt with the appeal on the merits.

D. Amendment to article 9.1

Amend article 9.1 to read:

"1. If the Tribunal finds that an application under paragraph 1 of article 2 is well founded ..."

Commentary

1. Article 9 deals with applications other than appeals from binding awards of the Arbitration Board, which are dealt with separately in article 9 bis since, in such applications, either the Secretary-General or a staff member may be the appellant and the contested decision is no longer that of the Secretary-General but the award of the Arbitration Board.

2. No substantive change is made by this amendment.

E. Insertion of a new article 9 bis

"The Tribunal shall hear and pass judgement upon applications appealing from awards of the Arbitration Board pursuant to paragraph 2 of article 2."

Commentary

1. Article 9 bis empowers the Tribunal to deal with applications by the Secretary-General or a staff member appealing from a binding award of the Arbitration Board.

2. The Tribunal may dismiss an application, in which case the award of the Arbitration Board would become final (subject to the procedure in article 11 of the statute, which permits a party to submit an application to the Committee on Applications for Review of Administrative Tribunal Judgements).

3. The Tribunal may allow the appeal by affirming, varying or rejecting the award of the Arbitration Board depending on its view of the legality of the award.

Current text	Amended text
Article 2	Article 2
"1. The Tribunal shall be competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members. The words 'contracts' and 'terms of appointment' include all pertinent regulations and rules in force at the time of alleged non-observance, including the staff pension regulations."	1. No change.
No equivalent.	"2. The Tribunal shall also be competent to hear and pass judgement upon applications from the Secretary-General or a staff member appealing from an award of the United Nations Arbitration Board (hereafter 'the Arbitration Board') on the grounds that: "(a) The Arbitration Board erred in law; or "(b) The Arbitration Board had committed a fundamental error of fact that occasioned a failure of justice; or "(c) The Arbitration Board had committed a fundamental error of procedure that occasioned a failure of justice.
"2. The Tribunal shall be open: "(a) To any staff member of the Secretariat of the United Nations even after his employment has ceased, and to any person who has succeeded to the staff member's rights on his death;	"3. The Tribunal shall be open: "(a) To any staff member of the Secretariat of the United Nations even after his employment has ceased, and to any person who has succeeded to the staff member's rights on his death;

Current text	Amended text
"(b) To any other person who can show that he is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied."	"(b) To any other person who can show that he is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied;
No equivalent.	"(c) To the Secretary-General of the United Nations when appealing an award of the Arbitration Board;
No equivalent.	"(d) To the Chairperson, Alternate Chairperson, a member or alternate member of the Arbitration Board in the event of dismissal by the Secretary-General."
"3. In the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by the decision of the Tribunal."	4. No change apart from the paragraph number.
"4. The Tribunal shall not be competent, however, to deal with any applications where the cause of complaint arose prior to 1 January 1950."	5. No change apart from the paragraph number.
Article 6	Article 6
"1. Subject to the provisions of the present Statute, the Tribunal shall establish its rules.	1. No change.
"2. The rules shall include provisions concerning:	2. No change.
"(a) Election of the President and Vice-Presidents;	(a) No change.
"(b) Composition of the Tribunal for its session;	(b) No change.
"(c) Presentation of applications and the procedure to be followed in respect to them;	(c) No change.

Current text	Amended text
"(d) Intervention by persons to whom the Tribunal is open under paragraph 2 of article 2, whose rights may be affected by the judgement;	"(d) Intervention by persons to whom the Tribunal is open under paragraph 3 of article 2, whose rights may be affected by the judgement;
"(e) Hearing, for purposes of information, of persons to whom the Tribunal is open under paragraph 2 of article 2, even though they are not parties to the case; and generally	"(e) Hearing, for purposes of information, of persons to whom the Tribunal is open under paragraph 3 of article 2, even though they are not parties to the case; and generally"
"(f) Other matters relating to the functioning of the Tribunal."	(f) No change.
Article 7	Article 7
"1. An application shall not be receivable unless the person concerned has previously submitted the dispute to the joint appeals body provided for in the staff regulations and the latter has communicated its opinion to the Secretary-General, except where the Secretary-General and the applicant have agreed to submit the application directly to the Administrative Tribunal.	"1. An application shall not be receivable unless the person concerned has previously submitted the appeal to the joint appeals body provided for in the staff regulations or to the Arbitration Board established pursuant to the United Nations Staff Regulations and the latter has communicated its opinion or award as the case may be to the Secretary-General, except where the Secretary-General and the applicant have agreed to submit the application directly to the Administrative Tribunal.
"2. In the event of the joint body's recommendations being favourable to the application submitted to it, and in so far as this is the case, an application to the Tribunal shall be receivable if the Secretary-General has:	"2. In the event that the recommendation of a joint appeals body or the Arbitration Board referred to in paragraph 1 of this article being favourable to the application submitted to it, and in so far as this is the case, an application to the Tribunal shall be receivable if the Secretary-General has:
"(a) Rejected the recommendations;	"(a) Rejected the recommendations;

Current text	Amended text
"(b) Failed to take any action within the thirty days following the communication of the opinion; or	"(b) Failed to take any action within the thirty days following the communication of the opinion; or
"(c) Failed to carry out the recommendations within the thirty days following the communication of the opinion.	"(c) Failed to carry out the recommendations within the thirty days following the communication of the opinion.
"3. In the event that the recommendations made by the joint body and accepted by the Secretary-General are unfavourable to the applicant, and in so far as this is the case, the application shall be receivable, unless the joint body unanimously considers that it is frivolous.	"3. In the event that the recommendations made by a joint appeals body or the Arbitration Board referred to in paragraph 1 of this article are unfavourable to the applicant, and in so far as this is the case, the application shall be receivable, unless the joint appeals body or the Arbitration Board referred to in paragraph 1 of this article unanimously considers that it is frivolous.
"4. An application shall not be receivable unless it is filed within ninety days reckoned from the respective dates and periods referred to in paragraph 2 above, or within ninety days reckoned from the date of the communication of the joint body's opinion containing recommendations unfavourable to the applicant. If the circumstance rendering the application receivable by the Tribunal, pursuant to paragraphs 2 and 3 above, is anterior to the date of announcement of the first session of the Tribunal, the time-limit of ninety days shall begin to run from that date. Nevertheless, the said time-limit on his behalf shall be extended to one year if the heirs of a deceased staff member or the trustee of a staff member who is not in a position to manage his own affairs, file the application in the name of the said staff member."	"4. An application shall not be receivable unless it is filed within ninety days reckoned from the respective dates and periods referred to in paragraph 2 above, or within ninety days reckoned from the date of the communication of the opinion of the joint appeals body or the Arbitration Board referred to in paragraph 1 of this article containing recommendations unfavourable to the applicant. Nevertheless, the said time-limit on his or her behalf shall be extended to one year if the heirs of a deceased staff member or the trustee of a staff member who is not in a position to manage his or her own affairs, file the application in the name of the said staff member."

Current text	Amended text
"5. In any particular case the Tribunal may decide to suspend the provisions regarding time-limits.	5. No change.
"6. The filing of an application shall not have the effect of suspending the execution of the decision contested.	"6. (a) The filing of an application against the recommendation of a joint appeals body or the Arbitration Board referred to in paragraph 1 of this article shall not have the effect of suspending the execution of the decision contested; "(b) In the event of the filing of an application against an award of the Arbitration Board, action on the award shall be suspended until the application has been dealt with by the Tribunal on the merits."
"7. Applications may be filed in any of the five official languages of the United Nations."	7. No change.
Article 9	Article 9
"1. If the Tribunal finds that the application is well founded, it shall order the rescinding of the decision contested or the specific performance of the obligation invoked. At the same time the Tribunal shall fix the amount of compensation to be paid to the applicant for the injury sustained should the Secretary-General, within thirty days of the notification of the judgement, decide, in the interest of the United Nations, that the applicant shall be compensated without further action being taken in his case; provided that such compensation shall not exceed the equivalent of two years' net base salary of the applicant. The	"1. If the Tribunal finds that an application under paragraph 1 of article 2 is well founded, it shall order the rescinding of the decision contested or the specific performance of the obligation invoked. At the same time the Tribunal shall fix the amount of compensation to be paid to the applicant for the injury sustained should the Secretary-General, within thirty days of the notification of the judgement, decide, in the interest of the United Nations, that the applicant shall be compensated without further action being taken in his case; provided that such compensation shall not exceed the equivalent of two years' net base salary of the applicant.

Current text	Amended text
Tribunal may, however, in exceptional cases, when it considers it justified, order the payment of a higher indemnity. A statement of the reasons for the Tribunal's decision shall accompany each such order.	The Tribunal may, however, in exceptional cases, when it considers it justified, order the payment of a higher indemnity. A statement of the reasons for the Tribunal's decision shall accompany each such order."
"2. Should the Tribunal find that the procedure prescribed in the Staff Regulations or Staff Rules has not been observed, it may, at the request of the Secretary-General and prior to the determination of the merits, order the case remanded for institution or correction of the required procedure. Where a case is remanded, the Tribunal may order the payment of compensation, not to exceed the equivalent of three months' net base salary, to the applicant for such loss as may have been caused by the procedural delay.	2. No change.
"3. In all applicable cases, compensation shall be fixed by the Tribunal and paid by the United Nations or, as appropriate, by the specialized agency participating under article 14."	3. No change.
	<u>Article 9 bis</u>
No equivalent.	"The Tribunal shall hear and pass judgement upon applications appealing from awards of the Arbitration Board pursuant to paragraph 2 of article 2."

ANNEX IV

Draft Secretary-General's Bulletin

Statute of the United Nations Disciplinary Board

(with explanatory commentary)*

Article 1

Establishment

Pursuant to the authority conferred upon the Secretary-General by staff regulation 10.1, the present statute establishes a United Nations Disciplinary Board, to be known as the United Nations Disciplinary Board (hereafter "the Disciplinary Board"), and defines its jurisdiction and powers.

Commentary to article 1

1. Article 1 describes the source of authority for the promulgation of the statute of the United Nations Disciplinary Board.

2. Article 1 also notes that the statute defines the jurisdiction and powers of the Disciplinary Board. These powers are consistent with the provisions of the article X of the Staff Regulations and, accordingly, no legislative action by the General Assembly to amend the Staff Regulations is needed.

Article 2

Competence and jurisdiction

1. The Disciplinary Board shall be competent, and shall have jurisdiction, to hear:

(a) Charges made by the Secretary-General that a staff member of the United Nations, other than a staff member of the United Nations Development Programme (including organs that it administers) and the United Nations Children's Fund, has failed to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, or has failed to observe the standards of conduct expected of an international civil servant and that this failure has amounted to unsatisfactory conduct within the meaning of staff regulation 10.2 and staff rule 110.1;

(b) Appeals by a former staff member of the United Nations, other than a staff member of the United Nations Development Programme (including

---

* The commentary will be deleted upon promulgation of the Bulletin.

organs that it administers) and the United Nations Children's Fund, against his or her summary dismissal.

2. The Disciplinary Board shall not be competent, however, to deal with any matters for which a Joint Disciplinary Committee or an ad hoc Joint Disciplinary Committee has been constituted before 1 January 1996.

Commentary to article 2

1. Article 2.1 is modelled on staff rule 110.5 (a), which defines the competence and jurisdiction of the JDC.

2. A complicating factor is caused by the fact that UNDP and UNICEF wish to maintain their own separate decentralized disciplinary procedures, which are established in their respective personnel manuals. These systems are broadly consistent with the existing Staff Rules and so can operate under that rubric. However, they would be inconsistent with the present reforms. If the Administrator of UNDP and the Executive Director of UNICEF decide to maintain their current disciplinary systems, they would have to promulgate the Staff Rules deleted by this reform into their procedures. This approach is permitted by new staff rule 110.8.

3. Article 2.2 results in all pending cases being handled by the Disciplinary Board unless a JDC or ad hoc JDC has been constituted for a particular case prior to the establishment of the Disciplinary Board. The date of effect of the statute is tentative.

Article 3

Membership

1. The Disciplinary Board shall be composed as follows:

(a) The Chairperson of the United Nations Arbitration Board shall, for the period of his or her office, be the Chairperson of the Disciplinary Board and shall also be the Chairperson of the New York section of the Disciplinary Board;

(b) The Alternate Chairperson of the United Nations Arbitration Board shall, for the period of his or her office, be the Alternate Chairperson of the Disciplinary Board and shall also be the Chairperson of the Geneva section of the Disciplinary Board;

(c) In New York and Geneva, two members and two alternate members shall be appointed by the Secretary-General, having regard to principles of equitable geographic distribution, from staff subject to the jurisdiction of the Disciplinary Board and who have the qualifications set out in paragraph 2 of this article;

(d) In New York and Geneva, two members and two alternate members shall be appointed by the Secretary-General, having regard to the

principles of equitable geographic distribution, from a list of eight staff members presented by the staff representative bodies on the Staff Management Coordination Committee, which staff members are subject to the jurisdiction of the Disciplinary Board and have the qualifications set out in paragraph 2 of this article;

(e) For those panels established at other duty stations pursuant to article 4 of this statute, one member and one alternate member shall be appointed by the Secretary-General in the same manner as indicated in subparagraph (c) above; one member and one alternate member shall be appointed from a list of four staff members presented by the staff representative body at the duty station concerned.

2. The members and alternate members of the Disciplinary Board appointed by the Secretary-General, pursuant to the procedures set out in subparagraphs (c), (d) and (e) of the preceding paragraph must, as a minimum, have the following qualifications:

(a) Highest standards of integrity and at least five years experience in the Secretariat;

(b) University-level degree in accounting, law, public administration or finance, or equivalent qualifications and professional experience relevant to the functions;

(c) Established ability to draft in a working language of the Secretariat, and adequate knowledge of another working language.

3. In order to ensure the absolute independence of the Disciplinary Board, members and alternate members of the Disciplinary Board cannot be members of the appointment and promotion bodies, or of staff representational bodies.

4. Members and alternate members shall have a term of two years, which may be renewed for a further and final period of two years.

5. Neither the Chairperson nor the Alternate Chairperson can be dismissed by the Secretary-General, except for misconduct and after having had the opportunity to respond to the charges of misconduct. Such person may, within ninety days of dismissal, appeal that dismissal to the Administrative Tribunal in accordance with its statute.

6. Members and alternate members of the Disciplinary Board may be removed by the Secretary-General for serious cause, with the consent of both the Chairperson and the Alternate Chairperson, but only after having had the opportunity to respond to the charges made against them.

7. The unexpired portion of the term of a member may be filled by an alternate member. In the event that it is necessary to appoint, for the remainder of a term, a new member or a new alternate member who had been appointed by the Secretary-General pursuant to article 3.1 (c) or (e) above, the Secretary-General shall appoint a qualified staff member to

serve out the remainder of the term. In the event that it is necessary to appoint, for the remainder of a term, a new member or a new alternate member who had been appointed by the Secretary-General pursuant to article 3.1 (d) or (e) above, the staff representative bodies concerned shall propose three candidates with the necessary qualifications to the Secretary-General to serve out the remainder of the term. The Secretary-General shall appoint one of the recommended candidates.

Commentary to article 3

1. Article 3.1 sets out the composition of the Disciplinary Board. In order to ensure professionalization of the Board, article 3.1 (a) and (b) provides that the Chairperson and Alternate Chairperson of the Disciplinary Board will be the Chairperson and Alternate Chairperson of the Arbitration Board for the period that they hold office. The Chairperson and Alternate Chairperson of the Arbitration Board are appointed in accordance with article 1.2 of the statute of the Arbitration Board. Utilization of these professional arbitrators will provide competent professional leadership to each section of the Disciplinary Board.

2. Staff rule 110.6 (a) (i) provides that the JDC is composed of members who are appointed by the Secretary-General and members who are elected by the staff at the duty station where a standing JDC is established. Article 3.1 (c) adopts a similar approach for staff appointed by the Secretary-General. However, article 3.1 (d) adopts a somewhat different approach for staff-nominated appointees since the difficulties with the triennial world-wide election of participant representatives to the Pension Board establishes that world-wide elections of members and alternate members of the Disciplinary Board would be cumbersome and impractical. As a result, the article provides that the staff representative bodies on the Staff Management Coordination Committee will provide a list of qualified candidates for the consideration of the Secretary-General. Subparagraph (e) provides that the same manner of appointment will be followed for appointing members and alternate members to the panels established at other duty stations pursuant to article 4 of this statute.

3. Paragraph 2 deals with the qualifications of the membership of the Disciplinary Board.

4. The recommendations of the Disciplinary Board must be seen to be independent and must inspire confidence. As a result, the requirement in article 3.2 (a) that staff appointed to the Disciplinary Board have the highest standards of integrity will be strictly enforced. For example, staff who have had a disciplinary measure imposed upon them in the past will be ineligible.

5. In order to ensure the professionalization of the Board, paragraphs 2 (b) and (c) of article 3 establish high qualifications for staff appointed to the Board. These qualifications seek to ensure that all staff appointed to the Board have the necessary ability to understand and evaluate the matters before them and are able to draft a report with recommendations that, by their force and logic, will normally be accepted by the Secretary-General. It is envisaged that it will be the membership of the Disciplinary Board that will draft its

reports, not the secretariat. The qualifications and ability of the membership of the Disciplinary Board is thus the most crucial aspect of the reform.

6. In order to ensure the absolute independence of the Disciplinary Board, article 3.3 provides that staff appointed to the Board cannot be members of appointment and promotion bodies or of staff representational bodies, as such membership could be perceived as being inconsistent with such independence.

7. Article 3.4 deals with the term of office of the members and alternate members of the Disciplinary Board. The Chairperson and Alternate Chairperson have three-year terms, with the possibility of one renewal, and members and alternate members have two-year terms. a/ This will provide some continuity to the membership of the Board, while also giving it the benefits of rotation of membership.

8. Articles 3.5 and 3.6 deal with removal of the Chairperson, the Alternate Chairperson or any of the membership of the Disciplinary Board. Article 3.5 provides the same mechanism for removal of the Chairperson and Alternate Chairperson as is provided in article 3.6 of the statute of the Arbitration Board. The case of members or alternate members is somewhat different since their assignment to the Disciplinary Board is part of their official duties. Removal is limited to serious cause, e.g., for continued failure to attend, with the due process protection as set out in the paragraph and with the added substantive protection that removal requires the consent of both the Chairperson and the Alternate Chairperson.

9. Article 3.7 deals with the manner of filling unexpired terms of office.

Article 4

Panels and Chairperson

1. The Disciplinary Board will be divided into two sections, to be located in New York and Geneva. The Geneva section will deal with charges of misconduct referred to it for advice and will hear appeals from staff summarily dismissed in respect of staff located in or administered from Europe, including all staff of the Office of the United Nations High Commissioner for Refugees but excluding staff serving in peace-keeping operations. The New York section will deal with such cases in respect of all other staff. When it is found necessary for a particular case, and when staff members having the requisite qualifications at a given duty station have been appointed as members and alternate members to the Board, the Chairperson or Alternate Chairperson of the Arbitration Board would travel to that duty station, where a panel would be constituted with two members or alternate members serving at that duty station.

2. Cases will be heard by a panel of three, composed of the Chairperson, or Alternate Chairperson, and two members or alternate members, one from the members or alternate members appointed by the Secretary-General and one from the members or alternate members appointed by the Secretary-General from the list submitted by the staff representative bodies. While a panel

is in session, members and alternate members will be released full time for the disposition of cases.

3. A challenge by a party to a member or alternate member of a panel will be decided upon by the Chairperson or Alternate Chairperson of the panel concerned.

Commentary to article 4

1. Article 4 defines the structure of the Disciplinary Board. It will be divided into two sections, to be located in New York and Geneva. However, as a result of the discussions in the Staff Management Coordination Committee and the concern to ensure due process and fair hearings regardless of the duty station, it was agreed that, when it is found necessary for a particular case, and when staff members having the requisite qualifications are present at a given duty station, the Chairperson or Alternate Chairperson of the Arbitration Board would travel to that duty station, where a panel would be constituted with two staff members serving at that duty station.

2. Article 4.1 recognizes that, pursuant to staff rule 110.4 (b) and (c), cases will arise in two ways. The normal case will be after the staff member has been notified of the allegations that are being investigated and after the Secretary-General has decided that his or her explanation is not satisfactory and has made formal charges of misconduct. Such charges are referred to the Disciplinary Board for advice. This is essentially the same pattern as occurs with the JDC. The second way in which a case comes to the Disciplinary Board will be in the form of an appeal by a staff member who has been summarily dismissed pursuant to staff rule 110.4 (b) (ii). The Rules enable the Secretary-General and the staff member to agree to waive referral of a case to the Disciplinary Board, continuing a possibility available under the present system (staff rule 110.4 (c)).

3. Detailed investigations will be conducted by the Administration in the field under conditions that safeguard the rights of due process. The methodology for such investigations will be promulgated in an administrative instruction. The Disciplinary Board, under its rules of procedure, will have the power to seek further information and, if necessary, to interview the staff member charged with misconduct (see art. 5).

4. Article 4.2 describes the way in which the Disciplinary Board is structured. It is envisaged that the Disciplinary Board will have sessions and that during those sessions the membership will be released full time. Experience will determine the length and frequency of sessions. This will be regulated by the rules of procedure of the Disciplinary Board.

5. Article 4.3 deals with challenges by a party to the membership of the Board. These will be decided upon by the Chairperson of the panel concerned.

Article 5

Rules of procedure

1. The Disciplinary Board shall establish its own rules of procedure, which shall fully protect the due process rights of the Secretary-General and the staff, provide rules for representation of staff, whether by serving or retired staff, and provide for speedy disposition of cases to enable the Disciplinary Board, where possible, to provide its advice within three months of receipt of charges or an appeal. A draft of the rules of procedure, or any proposed amendments thereto, shall be submitted for comments to the Secretary-General, whose comments shall also transmit the views of the Staff Management Coordination Committee.

2. Staff charged with misconduct will be given the opportunity to state their side of the case in writing to the Disciplinary Board. If the Chairperson or Alternate Chairperson certifies that oral argument is necessary for the proper disposition of the case, such staff will be given the opportunity to state their case orally. If personal appearance is not practical, either because of budgetary difficulties or time constraints, a staff member charged will be given the opportunity to state his or her side of the case by teleconference facilities. Similar facilities will be used to interview witnesses, if deemed necessary by the Disciplinary Board.

3. A panel may decide, for cause, to waive any of the rules of procedure. The reason for such waiver shall be set out in its recommendation.

4. The Disciplinary Board shall publish its rules of procedure.

Commentary to article 5

1. As the Disciplinary Board is, and must be, an independent body, it must establish its own rules of procedure, although it is appropriate that the Board consult the Secretary-General for his comments. It is also essential, to foster confidence in a system that seeks to ensure fair disciplinary procedures world wide and to comply with the requirements of staff regulation 8.1, that the Secretary-General transmit to the Disciplinary Board the comments of staff and management through the Staff Management Coordination Committee.

2. Article 5.1 provides a goal of three months to complete a case. The current goal of four weeks, set out in staff rule 110.7 (a), is unrealistic, but a target of three months seems viable. Of course, the rules of procedure will provide for detailed time-limits for submission of particular information and will have provision for extension of those time-limits should the Disciplinary Board consider that such extensions are needed.

3. The application of the 300 series of the Staff Rules, which recently introduced appointments of limited duration, is at present closely monitored to identify problem areas. Disciplinary provisions adjusting the rules to the special situation of staff serving under the 300 series may be introduced when the 300 series is revised, after appropriate consultations, in the light of experience gained in the first year of its application.

4. As a result of the agreement to decentralize the disciplinary process and the consideration, when necessary, of disciplinary cases by panels at duty stations away from Headquarters, the majority of staff charged with misconduct would have the opportunity to make a personal appearance before a disciplinary panel to state his or her case. In cases where the establishment of such panels will not be deemed feasible or practical, judicious use of teleconference facilities, which improve rapidly year after year, seems an acceptable alternative. The Disciplinary Board would always be able to require personal appearance if essential.

5. Article 5.2 provides that a panel may waive any of the rules of procedure, but must explain in its report why the rule is being waived.

6. The rules of procedure must, of course, be published and be available to staff.

Article 6

Receivability

The Disciplinary Board shall receive and hear requests for advice on allegations of misconduct presented against a staff member pursuant to staff rule 110.4 and shall receive and hear appeals against summary dismissal imposed by the Secretary-General pursuant to staff regulation 10.2, provided that the appeal is filed within the time-limits and the conditions prescribed in staff rule 111.2 (a), as in force as at the time of the alleged non-observance.

Commentary to article 6

Article 6 deals with the two ways in which a case may be receivable by the Disciplinary Board. The first way is a disciplinary case referred to the Board by the Secretary-General for its advice. This is the same procedure that applies to the JDC. The second way is also similar to the present rules and empowers the Disciplinary Board to hear appeals by former staff against summary dismissal.

Article 7

Powers

1. The Disciplinary Board, after a review of the charges of misconduct or the appeal against summary dismissal, shall recommend to the Secretary-General:

(a) Imposition of one or more of the disciplinary measures set out in staff rule 110.3 as a penalty or penalties for the misconduct;

(b) That the charges be dropped;

(c) That the Secretary-General's decision to summarily dismiss the staff member be maintained, rescinded or varied;

(d) Such other recommendations as it may see fit to make in the interests of justice.

2. A panel of the Disciplinary Board, prior to making a recommendation pursuant to paragraph 1 of this article, may seek further information and may specify the time-limit for provision of such information.

3. A panel of the Disciplinary Board shall be bound by the jurisprudence of the United Nations Administrative Tribunal and shall consider its own prior recommendations, and those of other panels, but shall not be bound by those earlier recommendations.

Commentary to article 7

1. Article 7.1 sets out the powers of the Disciplinary Board to recommend imposition of one of the disciplinary measures set out in rule 110.3 or to recommend that a decision to summarily dismiss a former staff member be maintained, rescinded or varied. In this respect, its powers mirror those of the JDC. They reflect the Charter requirement that it is the Secretary-General who is responsible for ensuring that the staff meet the standards of integrity required by article 101.3 of the Charter. The conclusions of the Disciplinary Board must thus remain as recommendations. In addition, the panel is given the power to make other recommendations arising out of its deliberations on a case; for example, that other staff should be investigated or that, while the staff member's acts or omissions could not be characterized as unsatisfactory conduct, those acts or omissions should be taken into account when reviewing the staff member's contractual status.

2. Article 7.2 enables panels of the Disciplinary Board to direct that further information be made available by the parties and enables a panel to set time-limits for the provision of such information.

3. Article 7.3 provides that panels of the Disciplinary Board will be bound by the jurisprudence of decisions of the Administrative Tribunal but will not be bound by earlier recommendations of the same or other panels of the Disciplinary Board.

Article 8

Recommendations

A panel of the Disciplinary Board shall issue recommendations to the Secretary-General by majority vote.

Commentary to article 8

Staff regulation 10.1 provides that the administrative machinery established in disciplinary matters shall provide advice to the Secretary-

General, i.e., its conclusions shall be in the form of recommendations. Article 8 provides that such recommendations will be by majority vote, as occurs under the present system.

Article 9

Appeals

1. A staff member may appeal to the Administrative Tribunal a decision of the Secretary-General on a recommendation of the Disciplinary Board in accordance with article 7 of the Tribunal's statute.

2. If the Secretary-General has not taken a decision on a recommendation of the Disciplinary Board within sixty days of the communication of the recommendation, the staff member has the right to receive a copy of the report and to appeal to the Administrative Tribunal in accordance with article 7 of the Tribunal's statute.

Commentary to article 9

1. Article 9.1 is based on rights given to staff by article 7 of the statute of the Tribunal and essentially reproduces the existing appeal system in respect of recommendations of the Disciplinary Board.

2. Article 9.2 remedies a defect in the present system, where a staff member does not receive the report of the JDC until a decision is taken, even though that staff member may appeal to the Tribunal if no decision is taken within thirty days of transmission of the report. To remedy this problem, article 9.2 provides that staff will have a right to obtain the Disciplinary Board report after thirty days if no decision has been taken on that report by the Secretary-General. A sixty-day period is deemed necessary since practice has shown that a thirty-day period, particularly during holiday periods or during a General Assembly session, is simply not enough time. Although the staff member could still appeal to the Tribunal within thirty days of the communication of the report, such action would be unlikely if the staff member knew that in another thirty days he or she would be given a copy of the report.

3. The statute of the Board is part of the terms of employment of a staff member. It follows that a staff member has the right of appeal to the Tribunal without the need of any further amendment to the statute of the Tribunal since the Disciplinary Board would be considered a joint body with the terms of article 7 of the Tribunal's statute. At some stage, the provision on time-limits in the Tribunal's statute could be adjusted, but this should be done in the light of experience as to the adequacy of the new sixty-day limit.

Article 10

Amendment

The present statute may be amended by the Secretary-General who shall report such changes to the General Assembly.

Commentary to article 10

This article provides that the Secretary-General may make changes to the statute of the Disciplinary Board but requires that such changes be reported to the General Assembly. Although the statute of the Disciplinary Board is a Secretary-General's bulletin, which may be amended by the Secretary-General following consultation with the staff in accordance with the procedures set out in chapter VIII of the Staff Regulations and Rules, the statute adopts many provisions from the Staff Rules. It thus may be prudent to provide that amendments to the statute are reported to the Assembly, particularly as the Disciplinary Board does not make binding decisions, it will perform a role of such fundamental importance. The Assembly would, of course, always have the power to require the Secretary-General to make modifications to the statute.

Notes

a/ In order to avoid complete turnover of members and alternate members every two or four years, some staggered form of membership might be considered.